Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

SAMUEL A. LEWIS,
Former Director, Arizona Department of Corrections,

Petitioner,

v.

LESLIE ANDREW HANLON,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the former Director of the Arizona Department of Corrections entitled to qualified immunity from a suit for money damages filed by an ex-inmate alleging a violation of the Ex Post Facto Clause based on the application of a formal "good-time" release policy promulgated after the inmate's conviction, which prevented his early release from prison due to a high risk classification, when (i) Arizona law existing when the inmate's crime was committed made "good-time" release completely discretionary with ADOC's Director, (ii) the Arizona Court of Appeals previously declared that the application of the formal policy did not violate Ex Post Facto principles, and (iii) the promulgation of the formal policy did not violate the Ex Post Facto Clause because it did not add to the inmate's sentence?

PARTIES TO THE PROCEEDING BELOW

Petitioner is Samuel A. Lewis, who was the Director of the Arizona Department of Corrections at all relevant times to this proceeding but who has since retired.

The Respondent is Leslie Andrew Hanlon, a former Arizona state prison inmate.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment entered by the United States Court of Appeals for the Ninth Circuit in this proceeding.

OPINIONS BELOW

The court of appeals opinion is not reported. Appendix ("App.") A. The judgments of the United States District Court for the District of Arizona also are not reported. Apps. B and C.

STATEMENT OF JURISDICTION

On July 25, 1996, the court of appeals entered the judgment from which review is sought. App. A. On September 6, 1996, the court denied rehearing. App. D. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent text of the Ex Post Facto Clause of the United States Constitution, art. I, § 9, cl. 3, provides as follows:

> No Bill of Attainder or Ex Post Facto Law shall be passed.

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The pertinent text of Arizona Revised Statutes Annotated ("A.R.S.") § 41-1604.07 is reproduced in Appendix E.

STATEMENT OF THE CASE

In 1986, the Arizona Legislature enacted A.R.S. § 41-1604.07(D), which gave the Director of the Arizona Department of Corrections ("ADOC") discretion to allow the early release of inmates in some circumstances:

> [ADOC's] director, according to rules promulgated by the department, *may* authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date.

(Emphasis added.) By necessary implication, the statute also granted the Director the discretion to deny early release of an inmate. Additionally, A.R.S. § 41-1604.07(B) changed prior law by providing that release credits

earned by a prisoner "shall not reduce the term of imprisonment imposed by the court."

On January 28, 1988, Respondent committed the crime of extortion of a federal agency, for which he was later sentenced to 5.25 years incarceration. While incarcerated with ADOC, Respondent earned release credits (or "good-time") pursuant to A.R.S. § 41-1604.07(A).

On May 1, 1991, pursuant to the authority given by A.R.S. § 41-1604.07(D), ADOC promulgated Director's Management Order ("DMO") 91-03, entitled "Earned Release Date." The DMO set formal guidelines for earned credit release, based in part on an inmate's risk scores. ADOC used a classification system based upon public risk scores ("P" scores) and institutional risk scores ("I" scores). These scores are graded from 1 to 5, with 5 being the highest risk score possible. Section 5.2.2 of the DMO made inmates with high classification scores ineligible for earned credit release:

> The following categories of inmates shall be ineligible for Earned Release Credit Date Release . . . . Inmates with Public Risk Scores of 4 or above or an Institutional Risk Score of 5 as a result of the institutional classification and Central Office Classification Review.

DMO § 5.2.2.; App. F at 38.

ADOC applied the new DMO 91-03 to many inmates. One challenged the DMO as violative of the Ex Post Facto Clause, but the Arizona Court of Appeals in *Sanchez v. Ryan*, 870 P.2d 1184 (Ariz. App. 1993), ruled that the application of the DMO to inmates sentenced prior to its promulgation did not violate the Ex Post Facto Clauses

found in the United States Constitution or in Arizona's Constitution. The Arizona Supreme Court declined to review the *Sanchez* decision. *Id.*

On August 19, 1991, ADOC denied the Respondent earned credit release because his classification scores were too high for release under DMO 91-03. App. C at 20. While still incarcerated, Respondent filed a habeas corpus complaint in the federal district court, which was stayed because Respondent had failed to pursue state court remedies. ADOC released Respondent when his full sentence expired on April 29, 1993. *Id.* After his release, Respondent filed an Amended Complaint, dismissing his claim for habeas relief and alleging a 42 U.S.C. § 1983 action for violation of the United States Constitution's Ex Post Facto Clause.

Petitioner moved for summary judgment on the basis of qualified immunity, pointing out that in *Sanchez*, the Arizona Court of Appeals had already upheld the constitutionality of Petitioner's application of the DMO to inmates sentenced prior to the creation of the DMO. However, the district court disagreed with the Arizona Court of Appeals decision in *Sanchez* and, on March 24, 1995, rejected qualified immunity. App. B.

Petitioner appealed. In a memorandum decision, the Ninth Circuit Court of Appeals upheld the district court's denial of qualified immunity for ADOC's former Director. The Ninth Circuit summarily dismissed the Arizona Court of Appeals prior determination that the DMO did not violate Ex Post Facto principles, stating: "[T]hat a court joined Lewis in his obvious error, does not convert the disregard of existing law into a reasonable mistake.

Lewis is not entitled to qualified immunity simply by relying on a state ruling that failed to consider controlling precedent." App. A at 8. In short, the Ninth Circuit Court of Appeals held that in order to avoid paying compensatory and punitive damages, Petitioner needed to know the complex area of Ex Post Facto law better than the Arizona appellate judges who had considered the issue and determined that there was no violation.

REASONS TO GRANT THE PETITION

1. A Conflict Exists in the Circuit Courts Regarding Whether Prior State Court Decisions "Clearly Establish Law" for Qualified Immunity Purposes.

The court of appeals' denied qualified immunity even though it had been clearly established by the Arizona Court of Appeals in *Sanchez v. Ryan*, 870 P.2d 1184 (Ariz. App. 1993) that there was no constitutional violation. The Ninth Circuit's decision is directly contradicted by the decision of the Second Circuit Court of Appeals' in *Allen v. Coughlin*, 64 F.3d 77 (2d Cir. 1995). *Allen* involved a New York Department of Corrections policy forbidding inmates from receiving newspapers and other publications from anyone other than the publisher. The plaintiff, a New York inmate, received newspaper clippings from his family that violated the "publishers-only" policy, and he sued for money damages when the clippings were confiscated.

Prior to the suit in *Allen*, another inmate had challenged New York's "publishers-only" policy in state court as violative of the First Amendment, but the New York

Appellate Division upheld the policy in *Montgomery v. Coughlin*, 605 N.Y.S.2d 569, 194 A.D.2d 264 (N.Y.App.Div. 1993). In *Allen*, the Second Circuit rejected the opinion of the New York state court and found that the "publishers-only" directive violated the First Amendment. *Allen*, 64 F.3d at 81. However, the Second Circuit ruled that prison officials were entitled to qualified immunity on the inmate's claim for money damages because "the (state) appellate division upheld the publishers-only rule with regard to clippings in *Montgomery*, and we cannot say that appellees should have been more prescient in anticipating our reaction." *Id.*

Thus, under *Allen*, if a public official acts consistently with a state court's previous decision on an issue the state official is entitled to qualified immunity notwithstanding the fact that the federal court disagreed with and overruled the state court's decision. However, *Allen* directly conflicts with the decision rendered below. In both cases, a prior state court decision had upheld the constitutionality of a state correctional policy. In both cases, federal courts had disagreed with the decisions rendered by the state courts, finding that the policies were unconstitutional. However, in *Allen* the Second Circuit ruled that the prior state court decision entitled public officials to qualified immunity. Here, the Ninth Circuit found the prior state court decision of no effect for qualified immunity purposes.

The decision in the present case is directly contrary to the Second Circuit decision. As such, the matter of how much weight to accord prior state court rulings in cases involving qualified immunity should be finally resolved by this Court.

2. The Decision Below Denying Defendant Qualified Immunity Conflicts with This Court's Precedent That Qualified Immunity Protects Governmental Officials Except Those Plainly Incompetent or Acting in Knowing Violation of the Law.

Qualified immunity shields governmental officials from liability for civil damages when their "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This Court's precedent specifically mandates qualified immunity for public officials making "judgment calls" in situations exactly like those presented in this case. *Id.* at 806. "Qualified immunity specially protects public officials from the specter of damages liability for judgment calls made in a legally uncertain environment." *Ryder v. United States*, 115 S. Ct. 2031, 2037 (1995). Making the scope of immunity absolutely clear, this Court has ruled that qualified immunity attaches to "all but the plainly incompetent and those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

"Clearly established law" is the focal point of inquiry, and the contours of the claimed constitutional entitlement must be "sufficiently clear [so] that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). The unlawfulness of the course of conduct "must be apparent" to the public official before qualified immunity will be denied. *Id.* In determining what is "reasonable," "[t]he court should ask whether the [public official] acted reasonably under the settled law in the circumstances, not

whether another reasonable, or more reasonable, interpretation of the events can be constructed five years after the fact." *Hunter v. Bryant*, 502 U.S. 224, 228 (1991).

Here, the decisions by the district court and the Ninth Circuit Court of Appeals cannot be reconciled with this Court's requirement that "unlawfulness must be apparent" for qualified immunity to be defeated. *Anderson*, 483 U.S. at 640. Arizona's statute made earned credit release fully discretionary with ADOC's Director, and no statutes in effect when Respondent committed his crime in 1988 required Respondent's good time credit release. Like the federal parole guidelines that this Court upheld in *Miller v. Florida*, 482 U.S. 423 (1987), ADOC's promulgation of a formal policy "merely rationalize[d] the exercise of statutory discretion, and that retrospective application of the guidelines thus does not violate the Ex Post Facto Clause." *Id.* at 434.

Further, prior to the district court's decision to deny qualified immunity, the identical Ex Post Facto challenge presented in this case was rejected by the Arizona Court of Appeals in *Sanchez*. In reaching the decision, the Arizona court considered the Ex Post Facto Clauses of both the United States and Arizona Constitutions. At the very least, it cannot be said, in light of the Arizona Court of Appeals decision, that any "unlawfulness" was "apparent." *Anderson*, 483 U.S. at 640. Indeed, how apparent can alleged unlawfulness be to ADOC's former Director when the Arizona Court of Appeals cannot find it? The Ninth Circuit's decision directly contradicts this Court's qualified immunity law and cannot be allowed to stand.

Furthermore, under applicable Ex Post Facto principles, it was not at all clear that a constitutional violation occurred here. Indeed, under the proper analysis, no Ex Post Facto violation has occurred.

The Constitution's Ex Post Facto Clause is aimed at laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." *Collins v. Youngblood*, 497 U.S. 37, 43 (1990). "After *Collins*, the focus of the Ex Post Facto inquiry is not on whether a legislative change produces some ambiguous sort of 'disadvantage,' nor . . . on whether an amendment affects a prisoner's 'opportunity to take advantage of provisions for early release' . . . but on whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." *California Dep't Of Corrections v. Morales*, 115 S. Ct. 1597, 1602 n.3 (1995).

Yet this notion of reducing "opportunit[ies] to take advantage of provisions for early release," rejected by this Court in *Morales*, is exactly what the lower federal courts relied upon in finding that DMO 91-03 violated the Constitution's Ex Post Facto Clause. For example, the district court stated "[t]hat [Petitioner] was not *required* to release [Respondent] on his earned credit release date is immaterial: it is sufficient that [Respondent's] opportunity to shorten his time in prison was reduced by the statute in question." (App. C at 26; emphasis in original.)

DMO 91-03 neither altered the definition of the criminal conduct for which Respondent was in prison, nor increased the penalties attached to his crime or the sentence he was serving. Therefore, under this Court's decisions, Respondent stated no Ex Post Facto violation as a

result of ADOC's implementation of DMO 91-03. This Court should grant this petition and direct the lower courts to follow its Ex Post Facto precedent, and grant Petitioner qualified immunity.

CONCLUSION

This Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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December 5, 1996

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LESLIE ANDREW HANLON Plaintiff-Appellee, v. SAMUEL A. LEWIS Defendant-Appellant.	No. 95-15869 D.C. No. CIV 92-1506 PHX EHC **MEMORANDUM***

(Filed Jul. 23, 1996)

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge, Presiding

Argued and Submitted June 11, 1996
San Francisco, California

Before: REINHARDT and HALL, Circuit Judges, and MERHIGE, District Judge.**

Samuel A. Lewis, Director of the Arizona Department of Corrections, appeals the district court's denial of his motion for summary judgment on the basis of qualified immunity on Leslie Andrew Hanlon's 42 U.S.C. § 1983 complaint alleging an ex post facto violation regarding his sentence. We conclude that the district

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Robert R. Merhige, Jr., Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

court correctly denied defendant Lewis's assertion of qualified immunity, and affirm.

In 1988, plaintiff Leslie Hanlon was charged in Pinal County Superior Court with embezzlement. He entered into a plea agreement and, on July 25, 1988, was sentenced to a term of 5.25 years. His sentence expiration date was set at April 29, 1993.

Arizona state law provides an opportunity for parole-eligible prisoners to earn release credits. A prisoner's earned release credit date is the date when the sum of the release credits earned and actual time served equals the sentence imposed. In its decision denying the defendant's qualified immunity assertion, the trial court stated that Hanlon's earned release credit date was set at November 5, 1991.[1]

At the time of Hanlon's offense, Arizona law gave the director of the Arizona Department of Corrections (ADOC) authority, pursuant to rules promulgated by the ADOC, to release any prisoner on his earned release credit date.[2] At the time of Hanlon's offense, it was the

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[1] Defendant in his opening brief on appeal states that Hanlon's original earned credit release date was estimated to be January 5, 1992. We do not resolve this potential dispute as it in no way affects the decision on qualified immunity.

[2] A.R.S. § 41-1604.07(D) provides in pertinent part: "The director, according to rules promulgated by the department, may authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date."

practice of the department routinely to release prisoners on that date.

At the commencement of his custody, Hanlon was given an administrative classification profile. A classification profile consists of two parts: a "P" score reflecting the inmate's risk to the public; and an "I" score reflecting the inmate's institutional risk. Both scores range from one to five, with five representing the greatest risk. On March 8, 1990, after he was found guilty of three major rule violations, Hanlon's classification profile was raised to 5/5, the maximum in both categories. At the time of his conviction, and on March 8, 1990, an inmate's classification profile did not bear on his earned release credit date: neither official policy nor department practice linked them. Indeed, defendant Lewis concedes that throughout this time prisoners were routinely released on their earned release credit dates with classification profiles of 5/5.

On May 1, 1991, more than three years after the offense for which Hanlon was sentenced occurred and more than a year after his classification profile was raised to 5/5, the ADOC promulgated the Director's Management Order (DMO) 91-03. DMO 91-03 provided that in order to qualify for release at the earned release credit date, an inmate must have a correctional classification profile with a P factor of 3 or below, and an I factor of 4 or below. Under the order, those inmates who meet such a profile, whose underlying offense allows for earning release credits, and who have earned release credits, are automatically approved for release on their earned release credit dates; those who do not meet the required

profile are automatically denied earned release credit date release.

On August 19, 1991, Hanlon's status was reviewed for earned release eligibility, and he was deemed ineligible, pursuant to DMO 91-03, because his classification profile was too high. Hanlon was not released until his sentence expired on April 29, 1993.

Defendant Lewis is entitled to qualified immunity in a suit for civil damages insofar as his conduct did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

We conclude that defendant Lewis's retroactive application of DMO 91-03 in this case violated a right sufficiently clearly established that a reasonable official would have understood that he was violating that right.

Article I of the Constitution provides that neither Congress nor any state shall pass any ex post facto law. U.S. Const. art. I, § 9, cl. 3, art. I, § 10, cl. 1. The Supreme Court has announced a two-prong test to determine whether the application of a penal law violates the ex post facto clause. "[F]irst, the law 'must be retrospective, that is, it must apply to events occurring before its enactment'; and second, 'it must disadvantage the offender affected by it.' " *Miller v. Florida*, 482 U.S. 423, 429 (1987) (quoting *Weaver v. Graham*, 450 U.S. 24, 29 (1981)).

An ex post facto law is not simply one that makes criminal an act that was lawful at the time it was committed, or a law that increases a sentence following the commission of the act for which punishment is imposed. Rather, this court has held that "[t]he ex post facto provision applies to a wide range of changes affecting trial procedures and the mechanics of punishment." *U.S. v. Paskow*, 11 F.3d 873, 876 (9th Cir. 1993).

In *Flemming v. Oregon Bd. of Parole*, 998 F.2d 721 (9th Cir. 1993), the Ninth Circuit struck down as an ex post facto law an amended state parole regulation that merely reduced the "opportunity" for early release. The court relied on the reasoning of the leading Supreme Court cases, and particularly on *Weaver*, stating that "it is sufficient for ex post facto purposes if a statute significantly reduces an inmate's early release *opportunities*, regardless if such opportunities are contingent on the exercise of official discretion." *Id.* at 724 (emphasis in the original).

The regulation promulgated by defendant Lewis when retroactively applied to Hanlon similarly deprived him of the opportunity to reduce his time in prison. As the trial court noted in granting plaintiff Hanlon's motion for summary judgment on the issue of liability, "Before DMO 91-03, plaintiff was eligible for release on his earned release credit date, and after DMO 91-03 he was not."

Appellant Lewis relies on *Smith v. United States Parole Commission*, 875 F.2d 1361 (9th Cir. 1989) and *Wallace v. Christensen*, 802 F.2d 1539 (9th Cir. 1986), to argue that, because "[t]he ADOC Director retained at all times since 1986, the absolute discretion to regulate the earned credit

release of prison inmates," the prohibition against ex post facto laws does not attach. He contends that the fact that the Director had discretion to promulgate rules means that the DMO is not a "law" for the purposes of ex post facto analysis, but rather a "mere procedural guidepost without the characteristics of law." *Smith*, 875 F.2d at 1367. Lewis's reliance on *Smith* is misplaced.

The Supreme Court has held that retroactive application of a statute which mandates a punishment that had been discretionary at the time the crime was committed violates the ex post facto clause. *See Lindsey v. Washington*, 301 U.S. 397, 400-02 (1937). Thus, "Lindsey establishes 'that one is not barred from challenging a change in the penal code on ex post facto grounds simply because the sentence he received was not more onerous than that which he might have received under the old.' " *Miller*, 482 U.S. at 432 (1987).

The "discretion" delegated to the ADOC Director under Arizona state law is not sufficient to render earned release credit date regulations mere "procedural guideposts without the characteristics of laws," in line with *Smith*. Rather, A.R.S. § 41-1604.07(D) delegates rulemaking authority to the ADOC to establish binding regulations for determining when a prisoner will be released on his earned release credit date. After DMO 91-03 was promulgated, the ADOC Director did not have discretion to "ignore" the directive "altogether as circumstances require," as the test set out in *Smith* requires. *Smith*, 875 F.2d at 1367.

Finally, Lewis's reliance on *Smith* is misplaced most clearly because in *Flemming*, this court, relying on well-

settled Supreme Court precedent – *Weaver, Miller,* and *Lindsey* – expressly limited *Smith* "to the context of federal parole guidelines and their related regulations." *Flemming,* 998 F.2d at 727. Lewis's contentions that the retroactive application of DMO 91-03 did not violate the ex post facto violation are without merit.

Lewis next argues that even if his decision to apply DMO 91-03 retroactively violated the prohibition against ex post facto laws, plaintiff Hanlon cannot establish that the 'contours' of his rights were 'sufficiently clear' that Lewis should have understood that his actions were unlawful. Lewis argues that the "mixed state of existing ex post facto analysis" entitles him to qualified immunity, even if a violation occurred. Lewis is only able to muster two cases to support his contention that Hanlon's rights were not clearly established.

In arguing for qualified immunity, Lewis argues that because the court's decision in *Flemming* to limit *Smith* expressly to its facts was not handed down until 1993, he was entitled to rely on *Smith* in 1991 when DMO 91-03 was promulgated. Such a contention is without merit. Lewis's reading of Smith was as implausible in 1991 as it is now. That *Flemming* was not decided until 1993 does not weaken its holding that prior Supreme Court precedent limited *Smith*: in *Flemming,* the court merely made explicit what was clear in the light of overwhelming Supreme Court precedent.

Lewis also relies heavily on the fact that the Arizona Court of Appeals, in considering the same issue raised in this case, found no ex post facto violation. *Sanchez v.*

Ryan, 178 Ariz. 88, 870 P.2d 1184 (App. 1993). This argument is more persuasive, however it is not dispositive. The *Sanchez* case was decided after *Flemming*, yet it fails to cite *Flemming*, or any other relevant Ninth Circuit or Supreme Court ex post facto decisions, with the single exception of *Weaver*, in concluding that no ex post facto violation occurred. That a court joined Lewis in his obvious error, does not convert the disregard of existing law into a reasonable mistake. Lewis is not entitled to qualified immunity simply by relying on a state ruling that failed to consider controlling precedent.

We conclude that, in light of *Lindsey*, *Weaver*, and *Miller*, Lewis's decision to retroactively apply the provisions of DMO 91-03 violated a clearly established constitutional right of which a reasonable person would have known. Accordingly, we affirm the district court's denial of qualified immunity.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

LESLIE ANDREW HANLON, Plaintiff, v. SAMUEL LEWIS, Defendant.	CIV 92 – 1506 PHX EHC **ORDER** (Filed Mar. 24, 1995)

Plaintiff's original Complaint was filed on August 10, 1992, while he was confined in the Arizona State prison Complex at Florence (ASPC-F). A Second Amended Complaint was filed on December 2, 1993. Plaintiff was released from custody on April 29, 1993.

Plaintiff alleges in his Complaint that the retroactive application of Director Management Order (DMO) 91-03 made him ineligible for release on his earned release credit date, in violation of the *Ex Post Facto* Clause of the United States Constitution. Plaintiff also alleged violations of his constitutional rights to due process and equal protection.

On September 27, 1994, this Court entered an Order ruling on the parties' Cross-Motions for Summary Judgment on the *ex post facto* claim. The Court granted the plaintiff's motion and denied the defendant's motion, ruling that the defendant's retroactive application of DMO 91-03 violated the *Ex Post Facto* Clause (dkt. 94). The Court did not rule on the issue of damages and did not address the plaintiff's due process and equal protection claims.

Defendant raised qualified immunity as a defense in his Answer to the Second Amended Complaint (dkt. 49). After the Court ruled on the summary judgment motions, the defendant filed a second Motion for Summary Judgment, arguing that the *ex post facto* claim should be dismissed on grounds of qualified immunity. The sole question for the Court is whether the defendant is shielded from liability in connection with the plaintiff's *ex post facto* claim by the doctrine of qualified immunity. The motion is fully briefed and ready for disposition without oral argument.

I. Background

The relevant facts are more extensively set forth in the Court's September, 1994 Order. The statutory background is described in that Order and in the state court of appeals decision in *Sanchez v. Ryan*, 178 Ariz. 88, 870 P.2d 1184 (App. 1993), (review denied, April 19, 1994), which addressed an identical *ex post facto* claim.

A.R.S. §41-1604.07(A)(1) entitles prisoners classified as parole eligible, class one to earn release credits. Prior to 1986, A.R.S. §41.1604.07(B) provided that release credits would be deducted from and would thus reduce the term of imprisonment imposed. Prisoners were automatically released on the date that their release credits, when added to the time that they had served, equaled the sentence imposed.

In 1986, §41-1604.07(B) was amended to provide that release credits would no longer reduce the term of imprisonment imposed. New subsection §41.1604.07(D), however, provided that

> The Director, according to rules promulgated by the department, may authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date.

DMO 91-03, promulgated on May 1, 1991, provided that earned release would be available only to prisoners who met certain criteria and who were granted release by the director. Significant for purposes of this motion is the DMO's requirement that a prisoner must have a public risk factor of 3 or below and an institutional risk factor of 4 or below to be eligible for earned release.[1] The court of appeals noted in *Sanchez* that at the hearing on the petition for writ of habeas corpus in Superior Court,

> counsel for the state admitted that before DMO 91-03 became effective, ADOC's practice was to release prisoners on their earned release credit dates even if their public risk factor was greater than 3.

Sanchez, 178 Ariz. at 90.

The plaintiff was charged with embezzlement in Pinal County Superior Court in 1988. He entered a plea agreement and was sentenced to 5.25 years on July 25, 1988. Plaintiff's earned release credit date was November 5, 1991; Plaintiff's sentence expiration date was April 29, 1993.

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[1] A classification profile consists of two parts: (1) a "P" score reflecting risk to the public and (2) an "I" score reflecting institutional risk. The scores range from one to five; five represents the highest risk.

On March 8, 1990, the plaintiff's administrative classification profile was raised to 5/5.[2] On August 19, 1991, the plaintiff was reviewed by the Institution Classification staff for earned release eligibility. Pursuant to DMO 91-03, the plaintiff was deemed ineligible for earned release because his classification profile was too high. The Court found in its previous order that the implementation of DMO 91-03 "effectively deprived plaintiff of his earned release credits." Order at 4 (dkt. 94).

II. Discussion

Defendant is entitled to qualified immunity unless the conduct at issue violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). To be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987). The question is not whether the very action in question has been held unlawful. *Id.*, 483 U.S. at 640, 107 S.Ct. at 3039. An action violates clearly established law when, in view of the pre-existing law, the unlawfulness of the action is apparent. *Id.*

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[2] As noted in the previous Order, the record is unclear as to Plaintiff's initial classification profile. The defendant has described the plaintiff as having a "checkered disciplinary history while at ADOC."

Contrary to the defendant's argument, it is not dispositive that no federal court has previously addressed the precise issue whether these earned release eligibility guidelines violate the *Ex Post Facto* Clause. Nor is it dispositive that the Arizona Court of Appeals found no *ex post facto* violation in the *Sanchez* case. The Court's September, 1994 ruling relied primarily on Supreme Court precedent that was well established in 1991, when the DMO was implemented. In particular, the Court relied on *Weaver v. Graham*, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981) and *Miller v. Florida*, 482 U.S. 423, 107 S.Ct. 2446, 96 L.Ed.2d 351 (1987).

Defendant relies in his qualified immunity motion on the argument that DMO 91-03 did not change Arizona law because – prior to its implementation – no statute, rule, or regulation *required* the director to release an inmate when he reached his earned release credit date. The director had discretion to do so and, apparently, it was the practice to do so even when the public risk factor exceeded 3. This argument was the basis for the court of appeals decision in *Sanchez*. That court found that at the time in question – before the enactment of the DMO – the director *could* release inmates who reached their earned release credit dates. However,

> no statute, rule, or regulation *required* the director to release all prisoners who had reached their earned release credit dates, and . . . the director's *practice* of doing so did not have the force and effect of law.

178 Ariz. at 91. The court of appeals concluded that "Because DMO 91-03 did not represent a change in the law that existed when appellee committed his offense, it

did not violate the constitutional prohibitions against ex post facto laws." *Id.*

This Court, however, reached a different conclusion in its September 27, 1994 order, finding that it was immaterial that the defendant was not required to release the plaintiff on his earned release credit date. Again, this Court relied primarily on the Supreme Court's 1981 decision in *Weaver v. Graham*, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981).

As the Ninth Circuit has noted, "Several passages in *Weaver* indicate that it is sufficient for ex post facto purposes if a statute significantly reduces an inmate's early release *opportunities*, regardless if such opportunities are contingent on the exercise of official discretion." *Flemming v. Oregon Board of Parole*, 998 F.2d 721, 724 (9th Cir. 1993). Specifically, in *Weaver*, the Supreme Court held that retroactive application of a statute changing the formula for deducting gain-time credits from a sentence violated the *Ex Post Facto* Clause, in spite of the fact that the gain-time allowance could be withdrawn, modified, or denied.

> Contrary to the reasoning of the Supreme Court of Florida, a law need not impair a "vested right" to violate the *ex post facto* prohibition. Evaluating whether a right has vested is important for claims under the Contracts or Due Process Clauses, which solely protect pre-existing entitlements . . . The presence or absence of an affirmative, enforceable right is not relevant, however, to the *ex post facto* prohibition . . . Thus, even if a statute merely alters penal provisions accorded by the grace of the legislature, it violates the Clause if it is both

> retrospective and more onerous than the law in effect on the date of the offense.

101 S.Ct. at 964-965.

The Ninth Circuit also noted in *Flemming* that the Supreme Court held in *Lindsey v. Washington*, 301 U.S. 397, 57 S.Ct. 797, 81 L.Ed. 1182 (1937) that one is not barred from challenging new law on *ex post facto* grounds simply because the sentence under the new law is not necessarily more onerous than that which would have been imposed previously. 998 F.2d at 725. "This holding leaves open the door to claims of ex post facto violations arising from laws with discretionary elements." *Id.*

In light of *Weaver* and *Lindsey*, a reasonable official should have been aware in 1991 that the application of DMO 91-03 to the plaintiff could violate the *Ex Post Facto* Clause. The Court concludes that Defendant Lewis is not shielded by qualified immunity.

III. Conclusion

Accordingly, for the reasons previously set forth,

IT IS ORDERED denying Defendant's Motion for Summary Judgment on Qualified Immunity (dkt. 97).

IT IS FURTHER ORDERED granting Plaintiff's Cross-Motion for Summary Judgment on Qualified Immunity (dkt. 114).

IT IS FURTHER ORDERED setting a pretrial conference in this matter on Monday, April 17, 1995 at 9:00 a.m.

DATED this 22 day of March, 1995.

/s/ Earl H. Carroll
Earl H. Carroll
United States
District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

LESLIE ANDREW HANLON, Plaintiff, v. SAMUEL LEWIS, Defendant.	CIV 92-1506 PHX EHC ORDER (Filed Sep. 27, 1994)

Introduction

On August 10, 1992, while confined in the Arizona State Prison Complex at Florence, Arizona, plaintiff filed a *pro se* complaint pursuant to 42 U.S.C. § 1983. Plaintiff filed an amended complaint on September 16, 1992 and a second amended complaint on December 2, 1993.

Plaintiff alleges that the retroactive application of Director Management Order (DMO) 91-03 made plaintiff ineligible for release on his earned credit release date,[1] in violation of the *Ex Post Facto* Clause of the United States Constitution. Plaintiff further alleges that the retroactive application of DMO 91-03 deprived plaintiff of a liberty interest in his early release from custody without due process or equal protection of law under the Fourteenth Amendment.

Named as defendant is Arizona Department of Corrections Director Samuel Lewis. Plaintiff seeks monetary

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[1] *see infra*, note 3.

and injunctive relief. Neither party has requested a jury trial.

On October 1, 1992, the Court stayed the action to permit plaintiff to pursue his state court remedies and, if necessary, his federal remedies pursuant to a writ of habeas corpus.

On April 29, 1993, plaintiff was unconditionally released from prison and, on October 28, 1993, the stay was vacated and defendant was directed to respond to the complaint.[2]

Currently pending before the Court are the following motions: defendant's motion for summary judgment (dkt. 62); plaintiff's motion for summary judgment (dkt. 71); plaintiff's motion to print Court's opinion (dkt. 72); plaintiff's motion for the Court to review the legal arguments in his amended complaint (dkt. 73); plaintiff's motion for judgment (dkt 82); plaintiff's response and objection to the Magistrate Judge's order filed March 17, 1994 (dkt 83); and plaintiff's motion for the Court to review a state court decision (dkt. 85).

Motions for Summary Judgment

The relevant facts of this case are not subject to any meaningful dispute:

In January, 1988, plaintiff was charged in Pinal County Superior Court with the crime of embezzlement. Plaintiff entered into a plea agreement and, on July 25,

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[2] Because plaintiff has been released from custody, his claims for injunctive relief are now moot.

1988, was sentenced to the custody of the Arizona Department of Corrections (ADOC) for a term of 5.25 years. Plaintiff's earned release credit date was set at November 5, 1991 and plaintiff's sentence expiration date was set at April 29, 1993.[3] Plaintiff's Exhibit F.

At the commencement of his custody, plaintiff was given an administrative classification profile. A classification profile consists of two parts: first, a "P" score reflecting plaintiff's risk to the public; and second, an "I" score reflecting plaintiff's institutional risk. These scores range from one to five, with five representing the greatest risk.

Plaintiff's initial classification profile does not appear in the record before the Court. However, plaintiff had what defendant alleges as a "checkered disciplinary history while with ADOC." Defendant's Statement of Facts at ¶ 3. On March 8, 1990, after he was found guilty of three major rule violations, plaintiff's classification profile was raised to 5/5.[4]

On May 1, 1991, more than three years after plaintiff was sentenced and nearly a year after plaintiff's classification profile was raised to 5/5, defendant promulgated DMO 91-03. *See* Defendant's Exhibit B. DMO 91-03 provided, *inter alia*, that in order to qualify for release at the

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[3] As will be more fully examined below, pursuant to A.R.S. § 41-1604.07, the earned release credit date is the date when the sum of release credits earned and actual time served (including credit for presentence incarceration) equals the sentence imposed.

[4] Plaintiff contends that one of the alleged violations was dismissed on appeal. Plaintiff's Exhibit K.

earned release credit date, an inmate must have a correctional classification profile with a P factor of 3 or below, and an I factor of 4 or below. Inmates who meet such a profile, whose underlying offense allows for earning release credits, and who have earned the release credits, *shall* be approved for earned release credit date release. DMO 91-03 at sec. 5.1.[5]

On August 19, 1991, plaintiff was reviewed by the Institution Classification staff for earned release eligibility. Plaintiff was deemed ineligible for earned release because, pursuant to DMO 91-03, his classification profile was too high.

In accordance with the ADOC Offender Classification System, at least four years are required to reduce an inmate's P score from a 5 to a 3 (i.e. a qualifying P level under 91-03). *See* Plaintiff's Exhibit M at p. 38. With a sentence expiration date of April 29, 1993, the implementation of DMO 91-03 effectively deprived plaintiff of his earned release credits because he would not have become

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[5] Effective June 24, 1992, DMO 91-03 was amended and the following passage was added to sec. 1.0:

> The Director retains the absolute discretion to modify this Order, as necessary, or to ignore it altogether as circumstances require. Such override may be made in the Director's sole and absolute discretion when needed to promote institutional safety and security or to account for other unique concerns. This Order is not a binding constraint on the Director's administrative decision-making process, but merely serves as a guide to the Director's proper exercise of his sole discretion.

See Plaintiff's Exhibit B.

eligible for earned release, assuming good behavior, until 1995.

Ex Post Facto Claim

Plaintiff alleges that defendant's application of DMO 91-03 violated the *Ex Post Facto* Clause of the Constitution.

Article I, section 10 of the Constitution prohibits the states from passing laws *ex post facto*:

> It is settled, by decisions of this Court so well known that their citation may be dispensed with, that any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed, is prohibited as ex post facto.

Collins v. Youngblood, 497 U.S. 37, 42, 110 S.Ct. 2715, 2719 (1990) (quoting *Beazell v. Ohio*, 269 U.S. 167, 169-70, 46 S.Ct. 68, 68 (1925). In Arizona, administrative rules and regulations may have the force and effect of law and be subject to the *ex post facto* prohibition. *See Arnold v. Arizona Board of Pardons and Paroles*, 167 Ariz. 155, 158, 805 P.2d 388, 391 (App. 1991).

In support of his motion for summary judgment, defendant Lewis refers the Court to *Sanchez v. Ryan*, 870 P.2d 1184 (Ariz.App. 1993) (*rev. denied* April 19, 1994), an Arizona Court of Appeals opinion that addresses the identical issues presently before the Court. Defendant

argues that *Sanchez* is dispositive and that the Court should summarily dismiss plaintiff's amended complaint. Defendant's motion is otherwise lacking legal analysis.

The following passage in *Sanchez* sets forth the statutory history of the Arizona statute governing earned release credits:

> Prior to 1986, A.R.S. section 41-1604.07(B) provided that release credits would be deducted from and reduce the term of imprisonment imposed. Pursuant to this statute, prisoners were automatically released on the date that their release credits, when added to the time that they had served, equaled the sentence imposed. This release date was then known as the 'sentence expiration' date.
>
> The legislature amended section 41-1604.07(B) in 1986 to provide that release credits would no longer reduce the term of imprisonment imposed.[6] 1986 Ariz. Sess. Laws, ch. 200, § 2. At the same time, it added subsection (D) to the statute. *Id.* Subsection (D) provides that the director of ADOC, pursuant to rules that ADOC has promulgated, *may* authorize the release of any prisoner on the date that his release credits, when added to the time

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[6] As amended, A.R.S. section 41-1604.07(B) provides as follows:

> Release credits earned by a prisoner pursuant to subsection A of this section shall not reduce the term of imprisonment imposed by the court on such prisoner nor reduce the sentence imposed on the prisoner for the purpose of determining such prisoner's parole eligibility.

> served, equal the sentence imposed.[7] This date is now known as the earned release credit date. *See* A.R.S. § 41-1604.07(D).

870 P.2d at 1185-86 (emphasis in original) (footnotes in original).

In this case, as in *Sanchez*, at the time plaintiff committed his offense, the only rule ADOC had promulgated concerning earned credit release, as authorized by section 41.1604.07(D), was Internal Management Procedure (IMP) 424.[8] IMP 424 set forth the procedure for the forfeiture and possible restoration of earned release credits.[9] According to ADOC's counsel in *Sanchez*, "the director had a practice of treating earned release credits as though they reduced the term of imprisonment imposed even

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[7] As amended, A.R.S. § 41-1604.07(D) provides in pertinent part as follows:

> The Director, according to rules promulgated by the department, may authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date.

[8] IMP 424 was superseded by IMP 503.1 on February 27, 1991.

[9] IMP 424(I)(D) provides as follows:

> In cases of institutionalized inmates involving major violations, a finding of guilty by the Disciplinary Committee may result in the recommendation for the forfeiture of earned release credits. These recommendations shall be submitted through the Institution Classification Committee, the Chief Executive Officer, and the Deputy Director, Adult Services, to the Director who may approve or deny the request at his sole discretion.

though section 41-1604.07(B) had been amended to provide that they would no longer so do." *Id.* at 1186.

Section 41-1604.07(C) provides that the director may declare any and all earned release credits forfeited upon reclassification of a prisoner resulting from a failure to adhere to the rules and regulation of the department, or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program. In the discretion of the director, the forfeited release credits may be subsequently restored.

In this case, however, plaintiff's earned release credits were not forfeited following his disciplinary proceedings and corresponding security profile reclassification. On March 2, 1993, plaintiff had accrued 541 days of earned release credits. Plaintiff's Exhibit D.

Returning to *Sanchez*, the Court of Appeals concluded as follows:

> On appeal, the state argues that DMO 91-03 did not implicate ex post facto concerns because it did not represent a change in the law that existed when appellee committed his offense. It notes that at the time in question, section 41-1604.07(D) provided that the director, in accordance with rules promulgated by ADOC, could release prisoners who had reached their earned release credit dates. It contends that no statute, rule, or regulation *required* the director to release all prisoners who had reached their earned release credit dates and that the director's *practice* of doing so did not have the force and effect of law. We agree.

> Appellee has not cited any statute, rule, or regulation that was in effect at the time he committed his offense that *required* the director to release him when he reached his earned release credit date . . . Because DMO 91-03 did not represent a change in the law that existed when appellee committed his offense, it did not violate the constitutional prohibitions against ex post facto laws.

870 P.2d at 1187 (Emphasis in original).

Argument

As an initial matter, the Court rejects defendant's argument that *Sanchez* is dispositive and, under the principles of federalism and comity, plaintiff's amended complaint must be disposed of summarily. To be sure, this Court must defer to the state courts on the construction of their laws, but this case involves more than the construction of the state statutes and regulations at issue; rather, it requires consideration of the Federal Constitution, and the inquiry does not call for any special degree of deference to the state courts. *Morales v. California Dep't of Corrections*, 16 F.3d 1001, n.5 (9th Cir. 1994) (*ex post facto* challenge to statutory change in the frequency of parole eligibility hearings).

As outlined above, the *Sanchez* decision rests on the ground that plaintiff had not cited any statute, rule or regulation in effect at the time he committed the offense that *required* defendant to release plaintiff when he reached his earned credit release date.

The *Ex Post Facto* Clause prohibits laws which "make more burdensome the punishment for a crime, after its

commission." *Collins v. Youngblood*, 497 U.S. at 42, 110 S.Ct. at 2724. That defendant was not *required* to release plaintiff on his earned credit release date is immaterial: it is "sufficient that [plaintiff's] 'opportunity to shorten his time in prison' was reduced by the statute in question." *Flemming v. Oregon Bd. of Parole* 998 F.2d 721, 724-25 (9th Cir. 1993) (quoting *Weaver v. Graham*, 450 U.S. 24, 34, 101 S.Ct. 960, 967 (1981)):

> [T]he Supreme Court has repeatedly stated that a criminal defendant need not show that she or he certainly would have received a less onerous punishment under a prior law to establish a constitutional violation. Stated another way, 'a law need not impair a 'vested right' to violate the *ex post facto* prohibition.'

Id. at 726 (quoting *Weaver*, 450 U.S. at 29, 101 S.Ct. at 964).

In *Weaver*, the Supreme Court considered an amendment to a Florida statute that reduced the amount of "gain time" an inmate could automatically earn. 450 U.S. at 25, 101 S.Ct. at 962.[10] The Court set forth two critical elements that must be present for a criminal or penal law to be *ex post facto*: "it must be retrospective, that is it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it." *Id.* at 29, 101 S.Ct. at 964. *See also Flemming*, 998 F.2d at 723.

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[10] Fla.Stat. § 944.275(1)(1979) enacted a new formula for monthly gain-time deductions. For instance, under the prior statute inmates could gain five days per month off for good behavior during the first two years of their sentence; whereas under the revised statute only three days per month could be gained. *Id.* at 963.

As to the first element, the Court held that "[t]he critical question is whether the law changes the legal consequences of acts completed before its effective date." *Id.* at 32, 101 S.Ct. at 965. The Court answered this question in the affirmative: "For prisoners who committed crimes before its enactment, [the statute] substantially alters the consequences attached to a crime already completed, and therefore changes the 'quantum of punishment.' " *Id.* at 33, 101 S.Ct. at 966 (quoting *Dobbert v. Florida*, 432 U.S. 282, 293-94, 97 S.Ct. 2290, 2298 (1977)).

As to the second element, the Court held that plaintiff is disadvantaged by the reduced opportunity to shorten his time in prison: "By definition, this reduction in gain-time accumulation lengthens the period that someone in [plaintiff's] position must spend in prison." *Id.* at 24, 101 S.Ct. at 967.

The *Weaver* Court found the statute at issue void as applied to plaintiff, reversing the judgment of the Supreme Court of Florida and remanding the case for further proceedings. *Id.* at 37, 101 S.Ct. at 968.

In *Weaver*, the Supreme Court relied on *Greenfield v. Scafati*, 277 F.Supp. 644 (D.Mass. 1967) (three-judge court), *summarily aff'd* 390 U.S. 713, 88 S.Ct. 1409. *Weaver*, 450 U.S. at 35, 101 S.Ct. at 967; *see also id.* at 38, 101 S.Ct. at 969 (Blackmun, J. concurring in judgment). In that case, a three-judge court considered the following amendment to a Massachusetts statute concerning good conduct deductions:

> A prisoner released on parole by the parole board, who has failed to observe all the rules of

> his parole and has been returned to a correctional institution for the violation of his parole, shall not receive deductions described in this section [for good conduct] for any of the first six months after he is returned to the correctional institution.

277 F.Supp at 645. The plaintiff in *Greenfield* was sentenced before the effective date of the amendment, and was paroled after the effective date. *Id.* Upon his violation of parole and return to prison, the statute was invoked. *Id.*

The *Greenfield* Court concluded that plaintiff was disadvantaged by the new restrictions on eligibility for release. *Id.* at 646. Moreover, the Court found "no distinction between depriving a prisoner of the right to earn good conduct deductions and the right to qualify for, and hence earn, parole. Each . . . materially 'alters the situation of the accused to his disadvantage.' " *Id.* (quoting *In re Medley*, 134 U.S. 160, 171, 10 S.Ct. 384, 387 (1890).

In his reply in support of summary judgment, defendant cites *Smith v. Parole Comm'n*, 875 F.2d 1361 (9th Cir. 1989). In *Smith*, the Ninth Circuit held that application of a revised federal parole regulation did not violate the *Ex Post Facto* Clause because it was not a "law" for *ex post facto* purposes. 875 F.2d at 1367-68. In *Flemming v. Oregon Bd. of Parole*, the Ninth Circuit, relying on *Miller v. Florida*, 482 U.S. 435, 107 S.Ct. 2446 (1987), explicitly limited *Smith* to the context of federal parole guidelines and their related regulations. 998 F.2d at 727.

> Our decision in *Smith* is distinguishable from the present case for reasons outlined by the Supreme Court in *Miller v. Florida* . . . First,

> in contrast to cases which "have held that the federal parole guidelines are not 'laws' for purposes of the *Ex Post Facto* Clause," Florida regards its sentencing guidelines as having "the force and effect of law." Second, the *Miller* Court indicated that the Florida sentencing guidelines do not "simply provide flexible 'guideposts' for use in the exercise of discretion: instead, they create a high hurdle that must be cleared before discretion can be exercised." Finally, "the revised [sentencing] guidelines directly and adversely affect the sentence petitioner receives.

Id. at 725 (interior citations omitted).

Applying the *Miller* analysis to the DMO at issue in the instant case, the Court must consider the following questions: (1) does Arizona regard its prison regulations to have the force and effect of law; (2) does the regulation at issue simply provide a flexible guidepost for use in the exercise of discretion, or does it create a barrier that must be cleared before discretion can be exercised; and (3) does the regulation at issue directly and adversely affect the sentence plaintiff received.

In *Sanchez v. Ryan,* the Arizona Court of Appeals concluded that "[a]dministrative rules and regulations may have the force and effect of law, *Herzberg v. David*, 27 Ariz. App. 418, 420, 555 P.2d 677, 679 (App. 1976), and therefore may be subject to the ex post facto prohibition." 870 P.2d at 1187. The *Sanchez* Court cited *Arnold v. Arizona Board of Pardons and Paroles*, 167 Ariz. 155, 158, 805 P.2d 388, 391 (App. 1991). In that case, involving a regulation relating to commutation applications, the court wrote:

> Appellants argue that the ex post facto clause applies to administrative regulations that are

> adopted pursuant to statute, in this case, A.R.S. § 31-401(F). The board does not dispute that fact, and neither do we.

Arnold, 805 P.2d at 391. In this case, DMO 91-03 was adopted pursuant to A.R.S. § 41-1604.07(D). Accordingly, the first prong of the *Miller* test is satisfied.

Second, under DMO 91-03 a prisoner must have a P score of less than 4 and an I score of less than 5 in order to be considered eligible for earned release. Thus, the prison regulation at issue creates a high hurdle that must be cleared before official discretion can be exercised.

Lastly, at the time plaintiff committed the offense, an inmate was eligible for release on the date that the sum of his earned time credits and his actual time served equaled the term of his sentence. After the implementation of DMO 91-03, an inmate was eligible for release on the date that the sum of his earned time credits and his actual time served equaled the term of his sentence, *but only if the inmate has a P score of less than 4 and an I score of less than 5*. Before DMO 91-03, plaintiff was eligible for release on his earned credit release date, and after DMO 91-03 he was not. DMO 91-03 applied to events occurring before its implementation and directly and adversely effected the length of plaintiff's confinement.[11]

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[11] Because of the Court's conclusion, the Court need not address plaintiff's due process or equal protection claims. The Court notes, however, that these claims were not raised or argued in either party's motion for summary judgment.

In addition, in his motion for summary judgment, plaintiff argues that this Court must determine defendant's claim of qualified immunity pursuant to *Anderson v. Creighton*, 483 U.S.

For the foregoing reasons, the Court concludes that DMO 9103, as applied to plaintiff, violated plaintiff's rights arising from *Ex Post Facto* Clause of the United States Constitution. There are no material issues of fact in dispute and plaintiff is entitled to judgment as a matter of law.

ACCORDINGLY,

IT IS ORDERED denying defendant's motion for summary judgment (dkt. 62).

IT IS FURTHER ORDERED granting plaintiff's motion for summary judgment (dkt. 71).

IT IS FURTHER ORDERED denying plaintiff's motion to print Court's opinion (dkt. 72).

IT IS FURTHER ORDERED denying as moot plaintiff's motion for the Court to review the legal arguments in his amended complaint (dkt. 73)

IT IS FURTHER ORDERED denying plaintiff's motion for judgment (dkt 82).

635, 107 S.Ct. 3034 (1987). *Anderson* stands for the proposition that qualified immunity is applicable when a reasonable officer could have believed his actions to be lawful in light of clearly established law. 483 U.S. at 642, 107 S.Ct. at 3040.

Defendant does not respond to plaintiff's assertion.

Qualified immunity is an affirmative defense, *Harlow v. Fitzgerald*, 457 U.S. 800, 815, 102 S.Ct. 2727, 2736 (1982), and the burden of proving the defense lies with the official asserting it. *Id.* at 819, 102 S.Ct. at 2738.

IT IS FURTHER ORDERED denying plaintiff's objections to the Magistrate Judge's order filed March 17, 1994 (dkt 83).

IT IS FURTHER ORDERED denying as moot plaintiff's motion for the Court to review a state court decision (dkt. 85).

IT IS FURTHER ORDERED setting a preliminary pretrial conference on Monday, October 31, 1994 at 9:30 a.m. to discuss further proceedings in this matter.

DATED this 26 day of September, 1994.

/s/ Earl H Carroll
Earl H. Carroll
United States
District Judge

APPENDIX D

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LESLIE ANDREW HANLON, Plaintiff-Appellee, v. SAMUEL A. LEWIS, Defendant-Appellant.	No. 95-15869 D.C. No. CIV 92-1506 PHX EHC ORDER (Filed Sep. 6, 1996)

Before: REINHARDT and HALL, Circuit Judges, and MERHIGE, District Judge.*

The panel has voted to deny appellee's petition for rehearing. Judges Hall and Reinhardt have voted to reject the suggestion for rehearing en banc and Judge Merhige so recommends.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

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* The Honorable Robert R. Merhige, Jr., Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

APPENDIX E

§ 41-1604.07. Earned release credits; forfeiture; restoration

A. Each prisoner classified as parole eligible, class one, pursuant to § 41-1604.06, shall be allowed the following release credits:

1. If sentenced upon a first conviction other than pursuant to § 13-703 or other than for a felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another, every two days served within class one shall be counted as an earned release credit of one day.

2. If sentenced pursuant to the provisions of § 13-604, subsection A, or upon first conviction of a class 4, 5 or 6 felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury or any other provision of law which prohibits release on any basis until serving not less than one-half the sentence imposed by the court, every two days served within class one shall be counted as an earned release credit of one day.

3. If sentenced according to any other of the provisions of § 13-604 or any other provision of law which prohibits release on any basis until serving not less than two-thirds the sentence imposed by the court, every three days served within class one shall be counted as an earned release credit of one day.

B. Release credits earned by a prisoner pursuant to subsection A of this section shall not reduce the term of imprisonment imposed by the court on such prisoner, nor

reduce the sentence imposed on the prisoner for the purpose of determining such prisoner's parole eligibility.

C. Upon reclassification of a prisoner resulting from such prisoner's failure to adhere to the rules and regulations of the department or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program, the director may declare any and all release credits earned by the prisoner forfeited. In the discretion of the director such release credits may subsequently be restored. The director shall maintain an account of release credits earned by each prisoner.

D. The director, according to rules promulgated by the department, may authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date. A prisoner on earned release credit release is not under the control of the department and the department is not required to provide parole services or otherwise supervise any prisoner released, except that the department may revoke the release of the prisoner until the final expiration of his sentence if the department has reason to believe that the released prisoner has engaged in criminal conduct during the term of his release.

Added by Laws 1978, Ch. 165, § 18, eff. Oct. 1, 1978. Amended by Laws 1980, Ch. 229, § 45, eff. April 23, 1980; Laws 1986, Ch. 200 § 2.

APPENDIX F

ARIZONA DEPARTMENT OF CORRECTIONS

DIRECTOR'S MANAGEMENT ORDER 91-03

SUBJECT: EFFECTIVE:
Earned Release Credit Date May 1, 1991
OPR: A1 SUPERSEDES: N/A DISTRIBUTION: A

*1.0 *PURPOSE*: To insure that inmates approved for an Earned Release Credit Date release meet Department and statutory criteria. The Director retains the absolute Discretion to modify this Order, as necessary, or to ignore it altogether as circumstances require. Such override may be made in the Director's sole and absolute discretion when needed to promote institutional safety and security to account for other unique concerns. This order is not a binding constraint on the Director's administrative decision-making process, but merely serves as a guide to the Director's proper exercise of his sole discretion.

2.0 *AUTHORITY*:

A.R.S. 41-1604, Duties and Powers of the Director.

A.R.S. 41-1604.07, Earned Release Credits; Forfeiture; Restoration.

A.R.S. 31-414, Absolute Discharge of Parolee; Effect; Notice to Victim.

3.0 *APPLICABILITY*: This policy is applicable to inmates eligible for Earned Release Credit Date release as defined by Arizona Revised Statute and staff responsible for preparation of inmate cases for release.

4.0 *DEFINITIONS*:

4.1 Committing Offense – The offense for which the inmate was convicted.

4.2 Correctional Classification Profile (CCP) – The summary of a series of factors and ratings used in the inmate classification system.

4.3 Earned Release Credit Date (ERCD) – Pursuant to A.R.S. 41-1604.07, the date when release credits earned and actual time served (includes credit for presentence incarceration), equal the sentence imposed. This release only applies to offenses committed on or after August 13, 1986 for inmates who meet criteria and is granted by the Director.

5.0 *THE ORDER:*

5.1 Eligibility Requirements – Inmates with date of offense on or after August 13, 1986, who meet the following criteria shall be approved for Earned Release Credit Date release:

5.1.1 Inmates must have a Correctional Classification Profile with a Public Risk factor of 3 or below and an Institutional Risk factor of 4 or below.

5.1.2 The committing offense must allow for earning release credits; and

5.1.3 The inmate must earn the release credits.

5.1.4 Special categories of inmates eligible for Earned Release Credit Date consideration are:

5.1.4.1 Inmates not eligible for provisional release due to the length of sentence or who become eligible for provisional release and earned release credit date at the same time due to the length of sentence.

5.1.4.1.1 Inmates who are denied a provisional release due to an Institutional Risk Factor rating of 4.

5.1.4.2 Inmates who receive sentence modification and become immediately eligible for an earned release credit date.

5.2 Ineligible for Earned Release Credit Date Release – The following categories of inmates shall be ineligible for Earned Release Credit Date release:

5.2.1 Inmates whose committing offense occurred *prior* to August 13, 1986.

5.2.2 Inmates with Public Risk Score of 4 or above or an Institutional Risk Score of 5 as a result of the Institutional Classification and Central Office Classification review.

5.2.3 Inmates who are *not* eligible for provisional release due to a Public Risk Score of 4 or above or an Institutional Risk Score of 5 as a result of the Institutional Classification and Central Office Classification review. (See ADC Policy #303.10, Provisional Release.)

5.2.4 Inmates who are denied Earned Release Credit Date release by the Administrator of the Offender Services Bureau, when it is determined that such denial is in the best interests of the public's health, safety, or welfare. The denial, with stated reasons, shall be provided to the inmate.

5.3 New Commitments to the Department – Within 20 workdays of the inmate's commitment to the Department, the Time Computation Unit of the Offender Services Bureau shall project the Earned Release Credit Date for those inmates earning release credits who are not eligible for provisional release due to sentencing or statute.

5.3.1 When an inmate who is eligible for an Earned Release Credit Date enters the Reception Center, the Institution Classification Committee shall complete the Institutional Endorsement Form, ADC Form #70501069, at the time of the inmate's *initial* classification. The Institutional Classification Committee shall submit the completed form to Central Classification for processing.

5.4 All Inmates Who Meet Criteria – The inmate's assigned Correctional Program Officer (CPO) or concurrent custody case manager shall complete the Institutional Endorsement Form for all inmates who meet the criteria outlined in Section 5.1.4.1 and 5.1.4.2.

5.4.1 The Classification and Parole Supervisor (CPS) of each institution shall ensure the Institutional Endorsement Form is completed at each level and the inmate is notified if determined to be ineligible.

5.4.2 The completed form shall be submitted to the Institutional Classification Committee.

5.4.3 The Institutional Classification Committee shall update each eligible inmate's

Correctional Classification Profile 150 days prior to the release eligibility date and shall submit the Institutional Endorsement Form to Central Classification for processing.

5.4.3.1. An inmate determined not eligible for Earned Release Credit Date release shall remain in institutional status until the inmate's sentence expiration date, unless released by other means.

5.4.4. Within thirty days of Central Classification's receipt of the Institutional Endorsement Form, the Administrator, Offender Services Bureau, shall ensure that:

5.4.4.1 Central Classification verifies the updated CCP and endorses or denies the Earned Release Credit Date release.

5.4.4.2 Central Classification forwards the Institutional Endorsement Form to the Time Computation Unit.

5.4.4.3 If approved, the Time Computation Unit verifies the release eligibility dates, annotates the AIMS DTO8 screen indicating final release confirmation and forwards a copy of the completed institutional Endorsement Form to the institution.

5.4.4.4 If denied, the Time Computation Unit recalculates the

inmate's release dates, notifies the institution and sends a copy of the completed Institutional Endorsement to the institution.

5.5 Inmates Who Do Not Meet Provisional Release Criteria – Inmates reviewed for provisional release who do not meet criteria shall also be reviewed for Earned Release Credit Date eligibility.

5.5.1 The Institutional Classification Committee and Central Office Classification shall enter on the Institutional Endorsement Form if the inmate is eligible for Earned Release Credit Date release. No further review is required at that time to determine eligibility.

5.6 Subsequent Eligibility After The 150-day Administrative Review – If a normal reclassification occurs after the 150-day administrative review which subsequently deems the inmate eligible for Earned Release Credit Date release, the inmate shall be determined to be eligible up to 30 days before the Earned Release Credit Date.

5.6.1 The Institution Classification Committee shall complete the required sections of a new Institutional Endorsement Form within two workdays and forward it to Central Classification. The eligibility shall be noted as a subsequent reclassification in the Comments section.

5.6.2 Central Classification shall verify the updated CCP and forward it to the Time Computation Unit.

5.6.3 The Time Computation Unit shall process the Institutional Endorsement Form within five workdays and notify the institution by AIMS message router.

5.7 Appeal – Inmates may appeal the rating on the updated CCP to the Administrator, Offender Services Bureau, within five workdays of receipt of notification of the verified CCP.

5.7.1 Upon receipt of the appeal, the Administrator, Offender Services Bureau, shall have ten workdays in which to respond. His decision shall be final.

5.8 Concurrent Custody/Interstate Compact

5.8.1 For concurrent custody inmates serving an Arizona sentence in another jurisdiction, the inmate's Institutional Endorsement Form shall be calculated within 20 workdays of receipt of the certified commitment by Central Office. The Institutional Endorsement Form for Interstate Corrections Compact cases shall be calculated and processed in accordance with section 5.1.1, 5.4 and 5.5.

5.8.2 The concurrent custody case manager shall request a current progress report on concurrent custody inmates 180 days prior to the release eligibility date. Central Office Classification shall determine the eligibility of the inmate within ten workdays of receipt of the progress report and forward the Institutional

Endorsement Form to the concurrent custody case manager.

5.8.2.1 The inmate's CCP rating shall be determined by Central Office Classification based on progress reports from the other state or federal jurisdiction.

5.8.3 If the inmate meets the eligibility criteria, the concurrent custody case manager shall notify the other jurisdiction and drop the detainer on a concurrent custody case.

5.8.4 The Central Office Special Services Section shall coordinate the Earned Release Credit Date release process for Interstate Corrections Compact inmates with the concurrent custody case manager.

5.8.5 If the inmate does not meet the eligibility criteria, the Special Services Officer shall notify the other jurisdiction, and the concurrent custody case manager shall complete a new time computation.

5.9 Rescission of an approved Earned Release Credit Date release prior to the release of an inmate – if an inmate's CCP score changes from an eligible to an ineligible score as a result of a classification hearing, or when an inmate is convicted of a Group I or II violation of the Rules of Discipline, the Warden, Deputy Warden, or Administrator shall request a rescission of the Earned Release Credit Date release by completing the required sections of a new Institutional Endorsement Form.

5.9.1 The required sections include the inmate's name, ADC#, date of birth, institution location, and the request for rescission portion of the form.

5.9.2 The completed form shall be forwarded to the Administrator, Offender Services Bureau, for review and action.

5.9.3 Inmates may appeal the rating on the updated CCP to the Administrator, Offender Services Bureau, within five workdays of receipt of notification of the verified CCP.

5.10 Release Conditions – Inmates released under Earned Release Credit Date release shall not be supervised by the Department of Corrections.

5.10.1 Inmates released on provisional release shall be released from supervision on their Earned Release Credit Date, unless the provisional release is rescinded.

5.10.2 Inmates who have signed a Provisional Release Waiver, who are eligible for Earned Release Credit Date release, shall be released on their Earned Releases Credit Date.

5.10.2.1 Inmates may *not* waive an Earned Release Credit Date release.

5.11 Inmates Released on Parole – The Time Computation Unit shall calculate an Earned Release Credit Date for all inmates released on parole to include all release credits earned.

5.11.1 Inmates shall not earn release credits while on parole.

5.12 Absolute Discharge – Inmates on parole status shall be referred to the Arizona Board of Pardons and Paroles for consideration of Absolute Discharge on their Earned Release Credit Date.

5.12.1 The Time Computation Unit shall compile an Earned Release Credit Date/Absolute Discharge eligibility list each month.

5.12.2 The Earned Release Credit Date/ Absolute Discharge eligibility list shall be sent to the Arizona Board of Pardons and Paroles and the Community Corrections Division sixty days prior to the Earned Release Credit Date.

5.12.3 The Community Corrections Division shall review the list and forward any comments or recommendations to the Board of Pardons and Paroles thirty days prior to the Earned Release Credit Date.

5.12.4 If the Board of Pardons and Paroles denies the Absolute Discharge, the inmate shall remain under parole supervision until the Sentence Expiration Date or until released by other means.

5.12.5 If the Board of Pardons and Paroles approved the Absolute Discharge, the Director of the Department of Corrections shall release the inmate from parole supervision and issue an

Absolute Discharge, ADC Form #41002001.

6.0 *IMPLEMENTATION*: Implementation shall occur on the effective date of this Order. This Order shall remain in effect until replaced by permanent Department policy or rescinded.

/s/ Samuel A. Lewis
Samuel A. Lewis
Director

Forms
Certificate of Absolute Discharge, ADC Form #41002001.
Institutional Endorsement Form, ADC Form #70501069.

Supreme Court, U.S.
FILED
JAN 2 1997
CLERK

NO: 96-911

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SAMUEL A. LEWIS
Petitioner

Vs.

Leslie Andrew Hanlon,
Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR

WRIT OF CERTIORARI

BRIEF FOR RESPONDENT

Leslie A. Hanlon
RESPONDENT PRO SE
P.O. Box 248
PHOENIX, ARIZ.
85001
Respondent
Pro se

10 PP

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QUESTIONS PRESENTED

1) ON FEDERAL ISSUES, WHO OVERRULES WHO, THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT OR THE ARIZONA COURT OF APPEALS.

2) HOW MANY TIMES DOES A PARTICULAR UNITED STATES COURT OF APPEALS HAVE TO SET FORTH ITS RULES, TESTS AND STANDARDS OF REVIEW BEFORE A RIGHT IS CLEARLY ESTABLISHED FOR PURPOSES OF QUALIFIED IMMUNITY

PARTIES TO THE PROCEEDING BELOW

PETITIONER IS SAMUEL A. LEWIS, WHO WAS THE DIRECTOR OF THE ARIZONA DEPARTMENT OF CORRECTIONS AT ALL REVELANT TIMES TO THIS PROCEEDING BUT HAS SINCE RETIRED

THE RESPONDENT IS LESLIE ANDREW HANLON, A FORMER ARIZONA STATE PRISON INMATE.

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RESPONSE FOR

PETITION FOR WRIT OF CERTIORARI

PETITIONER HAS PETITIONED THIS COURT FOR CERTIORARI TO REVIEW THE JUDGEMENT ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

RESPONDENT DOES HEREBY RESPOND.

OPINIONS BELOW

THE COURT OF APPEALS OPINION IS NOT REPORTED. APPENDIX ("APP") A. THE JUDGEMENTS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT COURT ALSO ARE NOT REPORTED. APPS. B AND C.

STATEMENT OF JURISDICTION

ON JULY 25, 1996 THE COURT OF APPEALS ENTERED THE JUDGEMENT (APP. A) AFFIRMING DISTRICT COURTS DENIAL OF QUALIFIED IMMUNITY. (APP B) ON SEPTEMBER 6, 1996, THE COURT OF APPEALS DENIED REHEARING. (APP D)

PETITIONER DID [NOT] APPEAL DISTRICT COURTS ORDER (APP C) DENYING PETITIONERS MOTION FOR SUMMARY JUDGEMENT ON THE ISSUE OF EX POST FACTO A MATTER OF FINAL JUDGEMENT.

CONSTITUTIONAL, STATUTORY AND POLICY PROVISIONS INVOLVED

THE PERTINENT TEXT OF THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION, ART. I, §10, CL.3 PROVIDES AS FOLLOWS:

> NO STATE SHALL *** PASS ANY BILL OF ATAINDER, EX POST FACTO LAW, ***

THE PERTINENT TEXT OF THE ARIZONA CONSTITUTION, ART. 4, PT 1, § 1 IS REPRODUCED IN APPENDIX E.

THE PERTINENT TEXT OF 42 U.S.C. § 1983 IS REPRODUCED IN APPENDIX F

THE PERTINENT TEXT OF ARIZONA REVISED STATUTES ANNOTATED ("A.R.S.") § 41-1604 IS REPRODUCEDS IN APPENDIX G

THE PERTINENT TEXT OF A.R.S. § 41-1604.07 IS REPRODUCED IN APPENDIX H

THE PERTINENT TEXT OF DEPARTMENTAL MANAGEMENT ORDER ("D.M.O") 91-03 IS REPRODUCED IN APPENDIX I

THE ARIZONA DEPARTMENT OF CORRECTIONS OFFENDER CLASSIFICATION SYSTEM ("A.D.O.C CLASSIFICATION MANUAL") IS REPRODUCED IN APPENDIX J.

THE FORFEITUR./RESTORATION OF TIME CREDITS INTERNAL MANAGEMENT POLICY ("IMP") 503.1 IS REPRODUCED IN APPENDIX K.

THE PAROLE CLASS ELIGIBILITY SYSTEM, I.M.P. 500.2 IS REPRODUCED IN APPENDIX L.

STATEMENT OF CASE

IN 1986, THE ARIZONA LEGISLATURE ENACTED A.R.S. §41-1604.07(D) WHICH GAVE THE DIRECTOR OF THE ARIZONA DEPARTMENT OF CORRECTIONS ("A.D.O.C.") THE DIRECTOR [LIMITED-DISCRECTION], TO RELEASE INMATES FROM IMPRISONMENT PURSUANT TO THE RULES AND REGULATIONS PUBLISHED BY THE A.D.O.C.

> [ADOC's] "DIRECTOR, [ACCORDING TO THE RULES PROMULGATED BY THE DEPARTMENT,] MAY AUTHORIZE THE RELEASE OF ANY PRISONER WHO HAS EARNED RELEASE CREDITS WHICH, WHEN ADDED TO THE TIME SERVED

BY THE PRISONER, EQUAL THE SENTENCE IMPOSED BY THE COURT; WHICH SHALL BE THE PRISONER'S EARNED CREDIT RELEASE DATE.

(HIGHLIGHTING ADDED) BY NECESSARY IMPLICATION DID [REPEAL BY IMPLICATION] TO THE EXTENT OF THE REPUGNANCY SO THAT THE WORD "IMPRISONMENT" SHOULD BE CONSTRUED AS THE WORD "SENTENCE".

FURTHER, PETITIONER IMPLIMENTED THE A.D.O.C. CLASSIFICATION MANUAL IN 1986 WHICH PROVIDES AS FOLLOWS:

(b) EARNED RELEASE CREDIT RELEASE: INMATES WHO COMMITTED THEIR OFFENSE(S) ON OR AFTER AUGUST 13, 1986 ARE "ELIGIBLE" IF THEIR CASE MEETS CRITERIA AS SET FORTH IN A.D.C. NUMBERED INTERNAL MANAGEMENT POLICY. (APP. J, P. 55)

ON JANUARY 28, 1988, RESPONDENT COMMITTED CRIME OF EXTORTION OF A FEDERAL AGENCY, FOR WHICH RESPONDENT WAS LATER SENTENCE TO 5.25 YEARS INCARCERATED WHILE INCARCERATED, RESPONDENT EARNED 541 DAYS OF EARNED RELEASE CREDITS (OR GOOD/GRAIN-TIME) PURSUANT TO A.R.S. § 41-1604.07(A).

ON APRIL 1, 1991, PURSUANT TO THE QUASI-LEGISLATIVE AUTHORITY GIVEN BY A.R.S. § 41-1604 (APP G). PETITIONER AGGRAVATED RESPONDENTS OFFENSE/SENTENCE BY IMPLIMENTING AND RETROACTIVELY APPLING D.M.C. 91-03 (APP I) A POLICY ENTITLED "EARNED CREDIT RELEASE DATE" THE D.M.O BASED ITS CRITERIA ON A PRISONER'S RISK (SECURITY) SCORES (SEE APP. J, PP 36-38) EFFECTIVELY USED A CLASSIFICATION SYSTEM BASED UPON PUBLIC RISK SCORES ("P" SCORE) AND INSTITUTIONAL RISK SCORES ("I" SCORE). THESE SCORES ARE GRADED FROM 1 TO 5, WITH 5 BEING THE HIGHEST RISK SCORE POSSIBLE.

BY EXAMINING D.M.O. 91-03 (5.2.2) (APP I P.2) THE COURT CAN SEE THAT THE D.M.O. IS AN [ADDICTIONAL RETROACTIVELY APPLIED PUNITIVE CONDICTION ATTACHED TO RESPONDENTS OFFENSE/SENTENCE.

ON AUGUST 19, 1991, A.D.O.C DENIED RESPONDENT, RESPONDENTS EARNED CREDIT RELEASE PURSUANT TO D.M.O. 91-03 (5.2.2)

IN FEBRUARY, 1992 RESPONDENT FILED A "SPECIAL ACTION" IN STATE COURT. STATE COURT DECLINED JURISDICTION.

ON JUNE 24, 1992, KNOWING FULL WELL THAT PETITIONER VIOLATED RESPONDENTS EX POST FACTO RIGHTS MADE THE VAIN ATTEMPT TO CLAIM ABSOLUTE DISCRETION BY IMPLIMENTING A PEN AND INK CHANGE (APP I, P. 2A)

ON AUGUST 10, 1992 RESPONDENT FILED A FEDERAL COMPLAINT PURSUANT TO 42 U.S.C § 1983. DISTRICT COURT STAYED THE ACTION PENDING THE EXHAUSTION OF STATE AND FEDERAL REMEDIES PURSUANT TO YOUNG V. KENNY, 907 F.2d 874, 876 (9TH CIR 1990)

ON APRIL 29, 1993, AFTER PETITIONER AND D.M.O. 91-03 HAD SUCCESSFULLY CONVERTED RESPONDENTS SENTENCE INTO A FLAT/CALENDER SENTENCE.[1]

ON MARCH 24, 1995 DISTRICT COURT EFFECTIVELY OVERRULED THE ARIZONA COURT OF APPEALS BECAUSE DISTRICT COURT IS NOT ONLY BOUND BY CONSTRUCTION OF STATE LAW BUT IS BOUND BY THE RULES, TESTS, AND STANDARDS OF REVIEW SETFORTH BY THE NINTH CIRCUIT COURT OF APPEALS AND THIS HIGH COURT IN THE FOLLOWING DECISIONS.

1) ANDERSON V CREIGHTON,
483 U.S. 635

2) CALDER V BULL,
3 DALL (3 U.S.) 386

[1] BASED UPON THE EVIDENCE SUBMITTED TO DISTRICT COURT, DISTRICT COURT DETERMINED THAT RESPONDENT WOULD NOT BE ELIGIBLE FOR EARNED CREDIT RELEASE UNTIL 1995 (APP C, PP 4-5), MORE THAN 18 MONTHS AFTER RESPONDENTS SENTENCE EXPIRATION. RODRIGUEZ V. U.S. PAROLE COM'N, 594 F.2d 170

3) COLLINS V. YOUNGBLOOD,
110 S.CT. 2715

4) DOBBERT V. FLORIDA,
97 S.CT 2290

5) LINDSEY V. WASHINGTON
57 S.CT 797

6) MILLER V FLORIDA
482 U.S. 423

7) WEAVER V. GRAHAM
450 U.S. 24

8) TENNESSEE VALLEY AUTHORITY V. HILL
98 S.CT. 2279

9) LOVE V FITZHARRIS
400 F.2d 382 (9TH CIR

10) RIFAI V. U.S. PAROLE COM'N
586 F.2d 685 (9TH CIR 1978)

11) ROTH V. U.S. PAROLE COM'N
724 F.2d 836 (9TH CIR 1984)

12) WALLACE V. CRISTENSEN,
802 F.2d 1539 (9TH CIR 1986)

13) SMITH V. U.S. PAROLE COM'N,
875 F.2d 1539 (9TH CIR 1988)

14) WATSON V. ESTELLE,
859 F.2d 105 (9TH CIR 1988)

15) PERUELER V. ESTELLE,
974 F.2d 1132 (9TH CIR 1992)

16) MORALES V. CALIF. DEPT. OF CORR.
16 F.3d 1001 (9TH CIR 1994)

17) RODRIGUEZ V. U.S. PAROLE COM'N,
594 F.2d 170 (7TH CIR
CITED IN SMITH AFFIRMITIVELY
18) INGLEASE V. U.S. PAROLE COM'N
768 F.2d 170 (7TH CIR
CITED IN SMITH AFFIRMITIVELY
19) ATKINS V SNOW,
922 F.2d 1558 (11TH CIR
CITED IN MORALES AFFIRMITIVELY

PETITIONER APPEALED. IN A MEMORANDUM DECISION, THE NINTH CIRCUIT COURT OF APPEALS AFFIRMED DISTRICT COURTS ORDER DENYING QUALIFIED IMMUNITY TO PETITIONER AND SUMMARILY DISMISSED THE ARIZONA

COURT OF APPEALS ONEROUS DETERMINATION THAT D.M.O. 91-03 DID NOT VIOLATE THE EX POST FACTO PRINCIPLES, STATING:

"THAT A COURT JOINED LEWIS IN HIS OBVIOUS ERROR, DOES NOT CONVERT THE DISREGARD OF EXISTING LAW INTO A REASONABLE MISTAKE. LEWIS IS NOT ENTITLED TO QUALIFIED IMMUNITY SIMPLY BY RELYING ON A STATE RULING THAT FAILED TO CONCIDER CONTROLLING PRESEDENT." APP. A, P. 8.

IN SHORT IF AN UNEDUCATED MENTALLY DISABLED PERSON CAN LEARN AND UNDERSTAND THE SIMPLE EX POST FACTO PRINCIPLES, THEN PETITIONER, A RETIRED DIRECTOR OF THE A.D.O.C. AND RETIRED FULL COLONEL OF THE UNITED STATES ARMY AND AN INSTRUCTOR OF THE UNITED STATES ARMY WAR COLLEGE, SHOULD REASONABLY HAVE KNOWN THAT PETITIONER VIOLATED RESPONDENTS EX POST FACTO RIGHTS

REASON TO DENY THE PETITION

I) THE STATUTE

WHILE RESPONDENT RELIES ON THE RULES TESTS, AND STANDARDS SETFORTH BY THIS HIGH COURT AND THE NINTH CIRCUIT COURT OF APPEALS, THEY ARE NOT THE MOST

CRITICAL PART OF RESPONDENTS ARGUEMENTS

THE MOST CRITICAL PART TO RESPONDENTS ARGUEMENTS IS THE SPECIFIC LANGUAGE OF A.R.S. § 41-1604.07(D) AS SHOWN BY THE FOLLOWING POINTS/FACTS:

A.) THE CLAUSE "ACCORDING TO THE RULES PROMULGATED BY THE DEPARTMENT" IS A LEGISLATIVE DIRECTIVE DIRECTING THAT THE RULES AND REGULATIONS OF THE A.D.O.C. [CONTROL] ANY AND ALL DISCRETION THAT THE WORD "MAY" MAY CONFER

IN SHORT PURSUANT TO THE RULES CONTAINED IN THE "A.D.O.C. CLASSIFICATION MANUAL" (APP H), D.M.O. 91-03 (APP. I), I.M.P 503.1 (APP. K), AND I.M.P. 500.2, (APP. L) PETITIONER [DID NOT] HAVE SOLE AND UNFETTERED DISCRETION UNTIL THE JUNE 9, 1992 PEN AND INK CHANGE ATTACHED TO D.M.O. 91-03 (APP. I, P. 2A)

B) THAT ACCORDING TO THE MERRIAM WEBSTER DICTIONARY THE DEFINITION FOR THE WORDS "ACCORDING TO" SPECIFICLY MEANS:

ACCORDING, ADJ., ADV.

1) IN ACCORDANCE.

2) ACCORDING TO, (A) IN ACCORDANCE WITH. (B) AS STATED BY.

SHOWN IN APPENDIX'S O AND P.

C.) THAT PETITIONER HAS NOT SUBMITTED ANY EVIDENCE THAT CONTRADICTS THE EVIDENCE SUBMITTED BY RESPONDENT.

D.) THE ARIZONA SUPREME COURT HAS ACCEPTED "THE MERRIAM WEBSTERS DICTIONARY" AS BEING AN AUTHORIVE SOURCE FOR DEFINING ARIZONA STATUTES. STATE EX REL FLOURNOY V. MANGUM, 113 ARIZ 151, 548 P.2d 1148

E.) THAT A LAW IS NOT VAGUE WHEN A PERSON OF AVERAGE INTELLIGENCE CAN UNDERSTAND SAID LAW. STATE V. SCOTIA, 146 ARIZ 159, 704 P.2d 289

F) THAT A.R.S. § 41-1604.07(B), (D), CONTAINS THE CLAUSES RESPECTIVELY:

> B. RELEASE CREDITS EARNED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL NOT REDUCE THE TERM OF IMPRISONMENT IMPOSED BY THE COURT***
>
> D. *** EQUAL THE SENTENCE IMPOSED BY THE COURT SHALL BE THE PRISONER'S EARNED CREDIT RELEASE DATE. ***

G) THAT THE WORDS "IMPRISONMENT" AND "SENTENCE" ARE DEFINED RESPECTIVELY AS FOLLOWS:

"IMPRISONMENT: THE DETENTION OF A PERSON CONTRARY TO HIS WILL. THE ACT OF PUTTING OR CONFINING A PERSON IN PRISON. THE RESTRAINT OF A PERSONS PERSONAL LIBERTY;"
BLACKS LAW DICTIONARY SIXTH EDITION P. 757

"SENTENCE: THE JUDGEMENT FORMALLY PRONOUNCED BY THE COURT OR JUDGE UPON THE DEFENDANT AFTER HIS CONVICTION IN A CRIMINAL PROSECUTION, IMPOSING THE PUNISHMENT TO BE INFLICTED, USUALLY IN THE FORM OF A FINE, INCARCERATION, OR PROBATION. (CITATION OMITTED)

IT IS CLEAR BY THE EVIDENCE AND PUSUANT TO THIS COURTS RULES, TESTS, AND STANDARDS OF REVIEW IN TENNESSEE VALLEY AUTHORITY, V. HILL, 98 S.CT. 2279, POSADAS V. NATIONAL CITY BANK OF NEW YORK, 56 S.CT 349 THAT WITH THE SIMPLE AND COMMON SENSE LANGUAGE OF A.R.S. §41-1604.07, THAT PETITIONER KNEW. AND DID VIOLATE WITH

DILIBERATE INDIFFERENCE RESPONDENTS EX POST FACTO RIGHTS. ANDERSON V CREIGHTON, 483 U.S. 635, 640, (1987), HARLOW V. FITZGERALD, 457 U.S. 800

H) THAT PETITIONER BEING BOUND BY HIS ATTORNEY'S KNOWLEGE BECAUSE PETITIONER ATTORNEY'S KNEW WHAT THE COURT OF APPEALS RULES, TESTS, AND STANDARDS OF RELIEW AS AS PETITIONERS ATTORNEYS USED SMITH V. U.S. PAROLE COM'N, 875 F.2d 1539 (9TH CIR 1988) IN PETITIONER'S NOTICN FOR SUMMARY JUDGEMENT AND HIS APPEAL TO THE COURT OF APPEALS (APP A, P 5-6).

"UNDER OUR SYSTEM OF REPRESENTATIVE LITIGATION, EACH PARTY IS DEEMED BOUND BY THE ACTS OF HIS LAWYER-AGENT"***

KIRK V. U.S.I.N.S., 927 F.2d 1106 (9TH CIR 1991) QUOTING, LINK V. WABASH RAILROAD CO., 370 U.S. 626, 634

2) THE ALLEGED CONFLICT

PETITIONER'S RELIANCE IN COMPARING THE COURT OF APPEALS, NINTH CIRCUIT AND ALLEN V. COUGHLIN, 64 F.3d 77 (2ND CIR. 1995) A CASE WERE THE RIGHT OF FREEDOM OF SPEECH "MAY" BE [SUBJECT] TO THE ISSUE OF

"LEGITIMATE PENOLOGICAL OBJECTIVES OF THE CORRECT SYSTEM." (ALLEN AT 79) IS VERY SERIOUSLY MISPLACED BASED UPON THE FOLLOWING POINTS/FACTS

A) EACH CASE MUST BE ADJUDGED UPON ITS OWN MERITS.

B.) PETITIONER HAS FAIL TO SHOW ANY PRESEDENT CASES

C.) RESPONDENT HAS SHOWN NINETEEN (19) CASES PREVIOUSLY ADJUDGED PRIOR TO SANCHEZ V. RYAN, 870 P.2d 1184 (ARIZ APP 1993) CLEARLY ESTABLISHING RESPONDENTS EX POST FACTO PROHIBITION RIGHTS (SEE RESPONDENTS BRIEF PP. 6-8)

D.) PETITIONER HAS FAILED TO SHOW HOW ELIMINATING RESPONDENTS EARNED CREDIT RELEASE (AN OPPORTUNITY FOR EARLY RELEASE FROM IMPRISONMENT) QUALIFIES FOR A "LEGITIMATE PENOLGICAL OBJECTIVE" (ALLEN AT 79)

CONCLUSION

IN CONCLUSION BASED UPON THE LAW, THE FACTS, MERITS, RULES, TESTS AND STANDARDS OF REVIEW SETFORTH BY THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT AND THIS HIGH COURT SHOULD EITHER DENY PETITIONER'S PETITION OR AFFIRM THE COURT OF APPEALS AND DISTRICT COURTS DECISIONS.

RESPECTFULLY SUBMITTED THIS 3 DAY OF JANUARY, 1997

LESLIE A. HANLON
RESPONDENT PRO SE

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 23 1996

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

LESILE ANDREW HANLON	)	No. 95-15869
	)	
Plaintiff-Appellee,	)	D.C. No. CIV 92-1506 PHX EHC
	)	
v.	)	**M E M O R A N D U M***
	)	
SAMUEL A. LEWIS	)	
	)	
Defendant-Appellant.	)	
	)	

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge, Presiding

Argued and Submitted June 11, 1996
San Francisco, California

Before: REINHARDT and HALL, Circuit Judges, and MERHIGE, District Judge.**

Samuel A. Lewis, Director of the Arizona Department of Corrections, appeals the district court's denial of his motion for summary judgment on the basis of qualified immunity on Leslie Andrew Hanlon's 42 U.S.C. § 1983 complaint alleging an ex post facto violation regarding his sentence. We conclude that the district court correctly denied defendant Lewis's assertion of qualified immunity, and affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Robert R. Merhige, Jr., Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

In 1988, plaintiff Leslie Hanlon was charged in Pinal County Superior Court with embezzlement. He entered into a plea agreement and, on July 25, 1988, was sentenced to a term of 5.25 years. His sentence expiration date was set at April 29, 1993.

Arizona state law provides an opportunity for parole-eligible prisoners to earn release credits. A prisoner's earned release credit date is the date when the sum of the release credits earned and actual time served equals the sentence imposed. In its decision denying the defendant's qualified immunity assertion, the trial court stated that Hanlon's earned release credit date was set at November 5, 1991.[1/]

At the time of Hanlon's offense, Arizona law gave the director of the Arizona Department of Corrections (ADOC) authority, pursuant to rules promulgated by the ADOC, to release any prisoner on his earned release credit date.[2/] At the time of Hanlon's offense, it was the practice of the department routinely to release prisoners on that date.

At the commencement of his custody, Hanlon was given an administrative classification profile. A classification profile consists of two parts: a "P" score reflecting the inmate's risk to the public; and an "I" score reflecting the inmate's institutional

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1/ Defendant in his opening brief on appeal states that Hanlon's original earned credit release date was estimated to be January 5, 1992. We do not resolve this potential dispute as it in no way affects the decision on qualified immunity.

2/ A.R.S. § 41-1604.07(D) provides in pertinent part: "The director, according to rules promulgated by the department, may authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date."

risk. Both scores range from one to five, with five representing the greatest risk. On March 8, 1990, after he was found guilty of three major rule violations, Hanlon's classification profile was raised to 5/5, the maximum in both categories. At the time of his conviction, and on March 8, 1990, an inmate's classification profile did not bear on his earned release credit date: neither official policy nor department practice linked them. Indeed, defendant Lewis concedes that throughout this time prisoners were routinely released on their earned release credit dates with classification profiles of 5/5.

On May 1, 1991, more than three years after the offense for which Hanlon was sentenced occurred and more than a year after his classification profile was raised to 5/5, the ADOC promulgated the Director's Management Order (DMO) 91-03. DMO 91-03 provided that in order to qualify for release at the earned release credit date, an inmate must have a correctional classification profile with a P factor of 3 or below, and an I factor of 4 or below. Under the order, those inmates who meet such a profile, whose underlying offense allows for earning release credits, and who have earned release credits, are automatically approved for release on their earned release credit dates; those who do not meet the required profile are automatically denied earned release credit date release.

On August 19, 1991, Hanlon's status was reviewed for earned release eligibility, and he was deemed ineligible, pursuant to DMO 91-03, because his classification profile was too high. Hanlon was not released until his sentence expired on April 29, 1993.

Defendant Lewis is entitled to qualified immunity in a suit for civil damages insofar as his conduct did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). To be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

We conclude that defendant Lewis's retroactive application of DMO 91-03 in this case violated a right sufficiently clearly established that a reasonable official would have understood that he was violating that right.

Article I of the Constitution provides that neither Congress nor any state shall pass any ex post facto law. U.S. Const. art. I, § 9, cl. 3, art. I, § 10, cl. 1. The Supreme Court has announced a two-prong test to determine whether the application of a penal law violates the ex post facto clause. "[F]irst, the law 'must be retrospective, that is, it must apply to events occurring before its enactment'; and second, 'it must disadvantage the offender affected by it.'" Miller v. Florida, 482 U.S. 423, 429 (1987) (quoting Weaver v. Graham, 450 U.S. 24, 29 (1981)).

An ex post facto law is not simply one that makes criminal an act that was lawful at the time it was committed, or a law that increases a sentence following the commission of the act for which punishment is imposed. Rather, this court has held that "[t]he ex post facto provision applies to a wide range of changes affecting

trial procedures and the mechanics of punishment." U.S. v. Paskow, 11 F.3d 873, 876 (9th Cir. 1993).

In Flemming v. Oregon Bd. of Parole, 998 F.2d 721 (9th Cir. 1993), the Ninth Circuit struck down as an ex post facto law an amended state parole regulation that merely reduced the "opportunity" for early release. The court relied on the reasoning of the leading Supreme Court cases, and particularly on Weaver, stating that "it is sufficient for ex post facto purposes if a statute significantly reduces an inmate's early release opportunities, regardless if such opportunities are contingent on the exercise of official discretion." Id. at 724 (emphasis in the original).

The regulation promulgated by defendant Lewis when retroactively applied to Hanlon similarly deprived him of the opportunity to reduce his time in prison. As the trial court noted in granting plaintiff Hanlon's motion for summary judgment on the issue of liability, "Before DMO 91-03, plaintiff was eligible for release on his earned release credit date, and after DMO 91-03 he was not."

Appellant Lewis relies on Smith v. United States Parole Commission, 875 F.2d 1361 (9th Cir. 1989) and Wallace v. Christensen, 802 F.2d 1539 (9th Cir. 1986), to argue that, because "[t]he ADOC Director retained at all times since 1986, the absolute discretion to regulate the earned credit release of prison inmates," the prohibition against ex post facto laws does not attach. He contends that the fact that the Director had discretion to promulgate rules means that the DMO is not a "law"

for the purposes of ex post facto analysis, but rather a "mere procedural guidepost without the characteristics of law." Smith, 875 F.2d at 1367. Lewis's reliance on Smith is misplaced.

The Supreme Court has held that retroactive application of a statute which mandates a punishment that had been discretionary at the time the crime was committed violates the ex post facto clause. See Lindsey v. Washington, 301 U.S. 397, 400-02 (1937). Thus, "Lindsey establishes 'that one is not barred from challenging a change in the penal code on ex post facto grounds simply because the sentence he received was not more onerous than that which he might have received under the old.'" Miller, 482 U.S. at 432 (1987).

The "discretion" delegated to the ADOC Director under Arizona state law is not sufficient to render earned release credit date regulations mere "procedural guideposts without the characteristics of laws," in line with Smith. Rather, A.R.S. § 41-1604.07(D) delegates rulemaking authority to the ADOC to establish binding regulations for determining when a prisoner will be released on his earned release credit date. After DMO 91-03 was promulgated, the ADOC Director did not have discretion to "ignore" the directive "altogether as circumstances require," as the test set out in Smith requires. Smith, 875 F.2d at 1367.

Finally, Lewis's reliance on Smith is misplaced most clearly because in Flemming, this court, relying on well-settled Supreme Court precedent -- Weaver, Miller, and Lindsey -- expressly limited Smith "to the context of federal parole guidelines and their related regulations." Flemming, 998 F.2d at 727. Lewis's

contentions that the retroactive application of DMO 91-03 did not violate the ex post facto violation are without merit.

Lewis next argues that even if his decision to apply DMO 91-03 retroactively violated the prohibition against ex post facto laws, plaintiff Hanlon cannot establish that the 'contours' of his rights were 'sufficiently clear' that Lewis should have understood that his actions were unlawful. Lewis argues that the "mixed state of existing ex post facto analysis" entitles him to qualified immunity, even if a violation occurred. Lewis is only able to muster two cases to support his contention that Hanlon's rights were not clearly established.

In arguing for qualified immunity, Lewis argues that because the court's decision in Flemming to limit Smith expressly to its facts was not handed down until 1993, he was entitled to rely on Smith in 1991 when DMO 91-03 was promulgated. Such a contention is without merit. Lewis's reading of Smith was as implausible in 1991 as it is now. That Flemming was not decided until 1993 does not weaken its holding that prior Supreme Court precedent limited Smith: in Flemming, the court merely made explicit what was clear in the light of overwhelming Supreme Court precedent.

Lewis also relies heavily on the fact that the Arizona Court of Appeals, in considering the same issue raised in this case, found no ex post facto violation. Sanchez v. Ryan, 178 Ariz. 88, 870 P.2d 1184 (App. 1993). This argument is more persuasive, however it is not dispositive. The Sanchez case was decided after Flemming, yet it fails to cite Flemming, or any other relevant Ninth Circuit or Supreme Court ex post facto decisions, with the

single exception of Weaver, in concluding that no ex post facto violation occurred. That a court joined Lewis in his obvious error, does not convert the disregard of existing law into a reasonable mistake. Lewis is not entitled to qualified immunity simply by relying on a state ruling that failed to consider controlling precedent.

We conclude that, in light of Lindsey, Weaver, and Miller, Lewis's decision to retroactively apply the provisions of DMO 91-03 violated a clearly established constitutional right of which a reasonable person would have known. Accordingly, we affirm the district court's denial of qualified immunity.

AFFIRMED

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
SEP 16 1996
by: _____
Deputy Clerk

APPENDIX B

FILED ___ LODGED
___ RECEIVED ___ COPY
MAR 24 1995
CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

LESLIE ANDREW HANLON, Plaintiff, v. SAMUEL LEWIS, Defendant.	CIV 92 - 1506 PHX EHC ORDER

Plaintiff's original Complaint was filed on August 10, 1992, while he was confined in the Arizona State Prison Complex at Florence (ASPC-F). A Second Amended Complaint was filed on December 2, 1993. Plaintiff was released from custody on April 29, 1993.

Plaintiff alleges in his Complaint that the retroactive application of Director Management Order (DMO) 91-03 made him ineligible for release on his earned release credit date, in violation of the Ex Post Facto Clause of the United States Constitution. Plaintiff also alleged violations of his constitutional rights to due process and equal protection.

On September 27, 1994, this Court entered an Order ruling on the parties' Cross-Motions for Summary Judgment on the ex post facto claim. The Court granted the plaintiff's motion and denied the defendant's motion, ruling that the defendant's retroactive application of DMO 91-03 violated the Ex Post Facto Clause (dkt. 94). The Court did not rule on the issue of damages and did not address the plaintiff's due process and equal protection claims.

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Defendant raised qualified immunity as a defense in his Answer to the Second Amended Complaint (dkt. 49). After the Court ruled on the summary judgment motions, the defendant filed a second Motion for Summary Judgment, arguing that the ex post facto claim should be dismissed on grounds of qualified immunity. The sole question for the Court is whether the defendant is shielded from liability in connection with the plaintiff's ex post facto claim by the doctrine of qualified immunity. The motion is fully briefed and ready for disposition without oral argument.

I. Background

The relevant facts are more extensively set forth in the Court's September, 1994 Order. The statutory background is described in that Order and in the state court of appeals decision in Sanchez v. Ryan, 178 Ariz. 88, 870 P.2d 1184 (App. 1993), (review denied, April 19, 1994), which addressed an identical ex post facto claim.

A.R.S. §41-1604.07(A)(1) entitles prisoners classified as parole eligible, class one to earn release credits. Prior to 1986, A.R.S. §41.1604.07(B) provided that release credits would be deducted from and would thus reduce the term of imprisonment imposed. Prisoners were automatically released on the date that their release credits, when added to the time that they had served, equaled the sentence imposed.

In 1986, §41-1604.07(B) was amended to provide that release credits would no longer reduce the term of imprisonment imposed. New subsection §41.1604.07(D), however, provided that

> The Director, according to rules promulgated by the department, may authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date.

DMO 91-03, promulgated on May 1, 1991, provided that earned release would be available only to prisoners who met certain criteria and who were granted release by the director. Significant for purposes of this motion is the DMO's requirement that a prisoner must have a public risk factor of 3 or below and an institutional risk factor of 4 or below to be eligible for earned release.[1] The court of appeals noted in Sanchez that at the hearing on the petition for writ of habeas corpus in Superior Court,

> counsel for the state admitted that before DMO 91-03 became effective, ADOC's practice was to release prisoners on their earned release credit dates even if their public risk factor was greater than 3.

Sanchez, 178 Ariz. at 90.

The plaintiff was charged with embezzlement in Pinal County Superior Court in 1988. He entered a plea agreement and was sentenced to 5.25 years on July 25, 1988. Plaintiff's earned release credit date was November 5, 1991; Plaintiff's sentence expiration date was April 29, 1993.

On March 8, 1990, the plaintiff's administrative

[1]A classification profile consists of two parts: (1) a "P" score reflecting risk to the public and (2) an "I" score reflecting institutional risk. The scores range from one to five; five represents the highest risk.

classification profile was raised to 5/5.[2] On August 19, 1991, the plaintiff was reviewed by the Institution Classification staff for earned release eligibility. Pursuant to DMO 91-03, the plaintiff was deemed ineligible for earned release because his classification profile was too high. The Court found in its previous order that the implementation of DMO 91-03 "effectively deprived plaintiff of his earned release credits." Order at 4 (dkt. 94).

II. Discussion

Defendant is entitled to qualified immunity unless the conduct at issue violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). To be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987). The question is not whether the very action in question has been held unlawful. Id., 483 U.S. at 640, 107 S.Ct. at 3039. An action violates clearly established law when, in view of the pre-existing law, the unlawfulness of the action is apparent. Id.

Contrary to the defendant's argument, it is not dispositive that no federal court has previously addressed the precise issue whether these earned release eligibility guidelines violate the Ex

[2]As noted in the previous Order, the record is unclear as to Plaintiff's initial classification profile. The defendant has described the plaintiff as having a "checkered disciplinary history while at ADOC."

Post Facto Clause. Nor is it dispositive that the Arizona Court of Appeals found no ex post facto violation in the Sanchez case. The Court's September, 1994 ruling relied primarily on Supreme Court precedent that was well established in 1991, when the DMO was implemented. In particular, the Court relied on Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981) and Miller v. Florida, 482 U.S. 423, 107 S.Ct. 2446, 96 L.Ed.2d 351 (1987).

Defendant relies in his qualified immunity motion on the argument that DMO 91-03 did not change Arizona law because -- prior to its implementation -- no statute, rule, or regulation required the director to release an inmate when he reached his earned release credit date. The director had discretion to do so and, apparently, it was the practice to do so even when the public risk factor exceeded 3. This argument was the basis for the court of appeals decision in Sanchez. That court found that at the time in question -- before the enactment of the DMO -- the director could release inmates who reached their earned release credit dates. However,

> no statute, rule, or regulation required the director to release all prisoners who had reached their earned release credit dates, and ... the director's practice of doing so did not have the force and effect of law.

178 Ariz. at 91. The court of appeals concluded that "Because DMO 91-03 did not represent a change in the law that existed when appellee committed his offense, it did not violate the constitutional prohibitions against ex post facto laws." Id.

This Court, however, reached a different conclusion in its

September 27, 1994 order, finding that it was immaterial that the defendant was not required to release the plaintiff on his earned release credit date. Again, this Court relied primarily on the Supreme Court's 1981 decision in Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981).

As the Ninth Circuit has noted, "Several passages in Weaver indicate that it is sufficient for ex post facto purposes if a statute significantly reduces an inmate's early release opportunities, regardless if such opportunities are contingent on the exercise of official discretion." Flemming v. Oregon Board of Parole, 998 F.2d 721, 724 (9th Cir. 1993). Specifically, in Weaver, the Supreme Court held that retroactive application of a statute changing the formula for deducting gain-time credits from a sentence violated the Ex Post Facto Clause, in spite of the fact that the gain-time allowance could be withdrawn, modified, or denied.

> Contrary to the reasoning of the Supreme Court of Florida, a law need not impair a "vested right" to violate the ex post facto prohibition. Evaluating whether a right has vested is important for claims under the Contracts or Due Process Clauses, which solely protect pre-existing entitlements ... The presence or absence of an affirmative, enforceable right is not relevant, however, to the ex post facto prohibition ... Thus, even if a statute merely alters penal provisions accorded by the grace of the legislature, it violates the Clause if it is both retrospective and more onerous than the law in effect on the date of the offense.

101 S.Ct. at 964-965.

The Ninth Circuit also noted in Flemming that the Supreme Court held in Lindsey v. Washington, 301 U.S. 397, 57 S.Ct. 797, 81

L.Ed. 1182 (1937) that one is not barred from challenging new law on ex post facto grounds simply because the sentence under the new law is not necessarily more onerous than that which would have been imposed previously. 998 F.2d at 725. "This holding leaves open the door to claims of ex post facto violations arising from laws with discretionary elements." Id.

In light of Weaver and Lindsey, a reasonable official should have been aware in 1991 that the application of DMO 91-03 to the plaintiff could violate the Ex Post Facto Clause. The Court concludes that Defendant Lewis is not shielded by qualified immunity.

III. Conclusion

Accordingly, for the reasons previously set forth,

IT IS ORDERED denying Defendant's Motion for Summary Judgment on Qualified Immunity (dkt. 97).

IT IS FURTHER ORDERED granting Plaintiff's Cross-Motion for Summary Judgment on Qualified Immunity (dkt. 114).

IT IS FURTHER ORDERED setting a pretrial conference in this matter on Monday, April 17, 1995 at 9:00 a.m.

DATED this 22 day of March, 1995.

Earl H. Carroll
United States District Judge

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DISTRICT OF ARIZONA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

LESLIE ANDREW HANLON, Plaintiff, v. SAMUEL LEWIS, Defendant.	CIV 92 - 1506 PHX EHC O R D E R

Introduction

On August 10, 1992, while confined in the Arizona State Prison Complex at Florence, Arizona, plaintiff filed a pro se complaint pursuant to 42 U.S.C. § 1983. Plaintiff filed an amended complaint on September 16, 1992 and a second amended complaint on December 2, 1993.

Plaintiff alleges that the retroactive application of Director Management Order (DMO) 91-03 made plaintiff ineligible for release on his earned credit release date,[1] in violation of the Ex Post Facto Clause of the United States Constitution. Plaintiff further alleges that the retroactive application of DMO 91-03 deprived plaintiff of a liberty interest in his early release from custody without due process or equal protection of law under the Fourteenth Amendment.

[1] See infra, note 3.

AO 72
(Rev 8/82)

Named as defendant is Arizona Department of Corrections Director Samuel Lewis. Plaintiff seeks monetary and injunctive relief. Neither party has requested a jury trial.

On October 1, 1992, the Court stayed the action to permit plaintiff to pursue his state court remedies and, if necessary, his federal remedies pursuant to a writ of habeas corpus.

On April 29, 1993, plaintiff was unconditionally released from prison and, on October 28, 1993, the stay was vacated and defendant was directed to respond to the complaint.[2]

Currently pending before the Court are the following motions: defendant's motion for summary judgment (dkt. 62); plaintiff's motion for summary judgment (dkt. 71); plaintiff's motion to print Court's opinion (dkt. 72); plaintiff's motion for the Court to review the legal arguments in his amended complaint (dkt. 73); plaintiff's motion for judgment (dkt 82); plaintiff's response and objection to the Magistrate Judge's order filed March 17, 1994 (dkt 83); and plaintiff's motion for the Court to review a state court decision (dkt. 85).

Motions for Summary Judgment

The relevant facts of this case are not subject to any meaningful dispute:

In January, 1988, plaintiff was charged in Pinal County Superior Court with the crime of embezzlement. Plaintiff entered

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[2] Because plaintiff has been released from custody, his claims for injunctive relief are now moot.

into a plea agreement and, on July 25, 1988, was sentenced to the custody of the Arizona Department of Corrections (ADOC) for a term of 5.25 years. Plaintiff's earned release credit date was set at November 5, 1991 and plaintiff's sentence expiration date was set at April 29, 1993.[3] Plaintiff's Exhibit F.

At the commencement of his custody, plaintiff was given an administrative classification profile. A classification profile consists of two parts: first, a "P" score reflecting plaintiff's risk to the public; and second, an "I" score reflecting plaintiff's institutional risk. These scores range from one to five, with five representing the greatest risk.

Plaintiff's initial classification profile does not appear in the record before the Court. However, plaintiff had what defendant alleges as a "checkered disciplinary history while with ADOC." Defendant's Statement of Facts at ¶ 3. On March 8, 1990, after he was found guilty of three major rule violations, plaintiff's classification profile was raised to 5/5.[4]

On May 1, 1991, more than three years after plaintiff was sentenced and nearly a year after plaintiff's classification profile was raised to 5/5, defendant promulgated DMO 91-03. See Defendant's Exhibit B. DMO 91-03 provided, inter alia, that in

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[3] As will be more fully examined below, pursuant to A.R.S. § 41-1604.07, the earned release credit date is the date when the sum of release credits earned and actual time served (including credit for presentence incarceration) equals the sentence imposed.

[4] Plaintiff contends that one of the alleged violations was dismissed on appeal. Plaintiff's Exhibit K.

AO 72
(Rev. 8/82)

order to qualify for release at the earned release credit date, an inmate must have a correctional classification profile with a P factor of 3 or below, and an I factor of 4 or below. Inmates who meet such a profile, whose underlying offense allows for earning release credits, and who have earned the release credits, shall be approved for earned release credit date release. DMO 91-03 at sec. 5.1.[5]

On August 19, 1991, plaintiff was reviewed by the Institution Classification staff for earned release eligibility. Plaintiff was deemed ineligible for earned release because, pursuant to DMO 91-03, his classification profile was too high.

In accordance with the ADOC Offender Classification System, at least four years are required to reduce an inmate's P score from a 5 to a 3 (i.e. a qualifying P level under 91-03). See Plaintiff's Exhibit M at p. 38. With a sentence expiration date of April 29, 1993, the implementation of DMO 91-03 effectively deprived plaintiff of his earned release credits because he would

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[5] Effective June 24, 1992, DMO 91-03 was amended and the following passage was added to sec. 1.0:

> The Director retains the absolute discretion to modify this Order, as necessary, or to ignore it altogether as circumstances require. Such override may be made in the Director's sole and absolute discretion when needed to promote institutional safety and security or to account for other unique concerns. This Order is not a binding constraint on the Director's administrative decision-making process, but merely serves as a guide to the Director's proper exercise of his sole discretion.

See Plaintiff's Exhibit B.

not have become eligible for earned release, assuming good behavior, until 1995.

Ex Post Facto Claim

Plaintiff alleges that defendant's application of DMO 91-03 violated the Ex Post Facto Clause of the Constitution.

Article I, section 10 of the Constitution prohibits the states from passing laws ex post facto:

> It is settled, by decisions of this Court so well known that their citation may be dispensed with, that any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed, is prohibited as ex post facto.

Collins v. Youngblood, 497 U.S. 37, 42, 110 S.Ct. 2715, 2719 (1990) (quoting Beazell v. Ohio, 269 U.S. 167, 169-70, 46 S.Ct. 68, 68 (1925). In Arizona, administrative rules and regulations may have the force and effect of law and be subject to the ex post facto prohibition. See Arnold v. Arizona Board of Pardons and Paroles, 167 Ariz. 155, 158, 805 P.2d 388, 391 (App. 1991).

In support of his motion for summary judgment, defendant Lewis refers the Court to Sanchez v. Ryan, 870 P.2d 1184 (Ariz.App. 1993) (rev. denied April 19, 1994), an Arizona Court of Appeals opinion that addresses the identical issues presently before the Court. Defendant argues that Sanchez is dispositive and that the Court should summarily dismiss plaintiff's amended complaint. Defendant's motion is otherwise lacking legal analysis.

AO 72
(Rev. 8/82)

The following passage in Sanchez sets forth the statutory history of the Arizona statute governing earned release credits:

> Prior to 1986, A.R.S. section 41-1604.07(B) provided that release credits would be deducted from and reduce the term of imprisonment imposed. Pursuant to this statute, prisoners were automatically released on the date that their release credits, when added to the time that they had served, equaled the sentence imposed. This release date was then known as the 'sentence expiration' date.
>
> The legislature amended section 41-1604.07(B) in 1986 to provide that release credits would no longer reduce the term of imprisonment imposed.[6] 1986 Ariz. Sess. Laws, ch. 200, § 2. At the same time, it added subsection (D) to the statute. Id. Subsection (D) provides that the director of ADOC, pursuant to rules that ADOC has promulgated, may authorize the release of any prisoner on the date that his release credits, when added to the time served, equal the sentence imposed.[7] This date is now known as the earned release credit date. See A.R.S. §41-1604.07(D).

870 P.2d at 1185-86 (emphasis in original) (footnotes in original).

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[6] As amended, A.R.S. section 41-1604.07(B) provides as follows:

> Release credits earned by a prisoner pursuant to subsection A of this section shall not reduce the term of imprisonment imposed by the court on such prisoner nor reduce the sentence imposed on the prisoner for the purpose of determining such prisoner's parole eligibility.

[7] As amended, A.R.S. §41-1604.07(D) provides in pertinent part as follows:

> The Director, according to rules promulgated by the department, may authorize the release of any prisoner who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date.

In this case, as in Sanchez, at the time plaintiff committed his offense, the only rule ADOC had promulgated concerning earned credit release, as authorized by section 41.1604.07(D), was Internal Management Procedure (IMP) 424.[8] IMP 424 set forth the procedure for the forfeiture and possible restoration of earned release credits.[9] According to ADOC's counsel in Sanchez, "the director had a practice of treating earned release credits as though they reduced the term of imprisonment imposed even though section 41-1604.07(B) had been amended to provide that they would no longer so do." Id. at 1186.

Section 41-1604.07(C) provides that the director may declare any and all earned release credits forfeited upon reclassification of a prisoner resulting from a failure to adhere to the rules and regulation of the department, or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program. In the discretion of the director, the forfeited release credits may be subsequently restored.

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[8] IMP 424 was superseded by IMP 503.1 on February 27, 1991.

[9] IMP 424(I)(D) provides as follows:

> In cases of institutionalized inmates involving major violations, a finding of guilty by the Disciplinary Committee may result in the recommendation for the forfeiture of earned release credits. These recommendations shall be submitted through the Institution Classification Committee, the Chief Executive Officer, and the Deputy Director, Adult Services, to the Director who may approve or deny the request at his sole discretion.

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In this case, however, plaintiff's earned release credits were not forfeited following his disciplinary proceedings and corresponding security profile reclassification. On March 2, 1993, plaintiff had accrued 541 days of earned release credits. Plaintiff's Exhibit D.

Returning to Sanchez, the Court of Appeals concluded as follows:

> On appeal, the state argues that DMO 91-03 did not implicate ex post facto concerns because it did not represent a change in the law that existed when appellee committed his offense. It notes that at the time in question, section 41-1604.07(D) provided that the director, in accordance with rules promulgated by ADOC, could release prisoners who had reached their earned release credit dates. It contends that no statute, rule, or regulation required the director to release all prisoners who had reached their earned release credit dates and that the director's practice of doing so did not have the force and effect of law. We agree.
>
> Appellee has not cited any statute, rule, or regulation that was in effect at the time he committed his offense that required the director to release him when he reached his earned release credit date. . . Because DMO 91-03 did not represent a change in the law that existed when appellee committed his offense, it did not violate the constitutional prohibitions against ex post facto laws.

870 P.2d at 1187 (Emphasis in original).

Argument

As an initial matter, the Court rejects defendant's argument that Sanchez is dispositive and, under the principles of federalism and comity, plaintiff's amended complaint must be disposed of summarily. To be sure, this Court must defer to the state courts on the construction of their laws, but this case

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involves more than the construction of the state statutes and regulations at issue; rather, it requires consideration of the Federal Constitution, and the inquiry does not call for any special degree of deference to the state courts. Morales v. California Dep't of Corrections, 16 F.3d 1001, n.5 (9th Cir. 1994) (ex post facto challenge to statutory change in the frequency of parole eligibility hearings).

As outlined above, the Sanchez decision rests on the ground that plaintiff had not cited any statute, rule or regulation in effect at the time he committed the offense that required defendant to release plaintiff when he reached his earned credit release date.

The Ex Post Facto Clause prohibits laws which "make more burdensome the punishment for a crime, after its commission." Collins v. Youngblood, 497 U.S. at 42, 110 S.Ct. at 2724. That defendant was not required to release plaintiff on his earned credit release date is immaterial: it is "sufficient that [plaintiff's] 'opportunity to shorten his time in prison' was reduced by the statute in question." Flemming v. Oregon Bd. of Parole 998 F.2d 721, 724-25 (9th Cir. 1993) (quoting Weaver v. Graham, 450 U.S. 24, 34, 101 S.Ct. 960, 967 (1981)):

> [T]he Supreme Court has repeatedly stated that a criminal defendant need not show that she or he certainly would have received a less onerous punishment under a prior law to establish a constitutional violation. Stated another way, 'a law need not impair a 'vested right' to violate the ex post facto prohibition.'

Id. at 726 (quoting Weaver, 450 U.S. at 29, 101 S.Ct. at 964).

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In Weaver, the Supreme Court considered an amendment to a Florida statute that reduced the amount of "gain time" an inmate could automatically earn. 450 U.S. at 25, 101 S.Ct. at 962.[10] The Court set forth two critical elements that must be present for a criminal or penal law to be ex post facto: "it must be retrospective, that is it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it." Id. at 29, 101 S.Ct. at 964. See also Flemming, 998 F.2d at 723.

As to the first element, the Court held that "[t]he critical question is whether the law changes the legal consequences of acts completed before its effective date." Id. at 32, 101 S.Ct. at 965. The Court answered this question in the affirmative: "For prisoners who committed crimes before its enactment, [the statute] substantially alters the consequences attached to a crime already completed, and therefore changes the 'quantum of punishment.'" Id. at 33, 101 S.Ct. at 966 (quoting Dobbert v. Florida, 432 U.S. 282, 293-94, 97 S.Ct. 2290, 2298 (1977)).

As to the second element, the Court held that plaintiff is disadvantaged by the reduced opportunity to shorten his time in prison: "By definition, this reduction in gain-time accumulation

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[10] Fla.Stat. § 944.275(1)(1979) enacted a new formula for monthly gain-time deductions. For instance, under the prior statute inmates could gain five days per month off for good behavior during the first two years of their sentence; whereas under the revised statute only three days per month could be gained. Id. at 963.

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lengthens the period that someone in [plaintiff's] position must spend in prison." Id. at 24, 101 S.Ct. at 967.

The Weaver Court found the statute at issue void as applied to plaintiff, reversing the judgment of the Supreme Court of Florida and remanding the case for further proceedings. Id. at 37, 101 S.Ct. at 968.

In Weaver, the Supreme Court relied on Greenfield v. Scafati, 277 F.Supp. 644 (D.Mass. 1967) (three-judge court), summarily aff'd 390 U.S. 713, 88 S.Ct. 1409. Weaver, 450 U.S. at 35, 101 S.Ct. at 967; see also id. at 38, 101 S.Ct. at 969 (Blackmun, J. concurring in judgment). In that case, a three-judge court considered the following amendment to a Massachusetts statute concerning good conduct deductions:

> A prisoner released on parole by the parole board, who has failed to observe all the rules of his parole and has been returned to a correctional institution for the violation of his parole, shall not receive deductions described in this section [for good conduct] for any of the first six months after he is returned to the correctional institution.

277 F.Supp at 645. The plaintiff in Greenfield was sentenced before the effective date of the amendment, and was paroled after the effective date. Id. Upon his violation of parole and return to prison, the statute was invoked. Id.

The Greenfield Court concluded that plaintiff was disadvantaged by the new restrictions on eligibility for release. Id. at 646. Moreover, the Court found "no distinction between depriving a prisoner of the right to earn good conduct deductions and the right to qualify for, and hence earn, parole. Each . . .

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materially `alters the situation of the accused to his disadvantage.'" Id. (quoting In re Medley, 134 U.S. 160, 171, 10 S.Ct. 384, 387 (1890).

In his reply in support of summary judgment, defendant cites Smith v. Parole Comm'n, 875 F.2d 1361 (9th Cir. 1989). In Smith, the Ninth Circuit held that application of a revised federal parole regulation did not violate the Ex Post Facto Clause because it was not a "law" for ex post facto purposes. 875 F.2d at 1367-68. In Flemming v. Oregon Bd. of Parole, the Ninth Circuit, relying on Miller v. Florida, 482 U.S. 435, 107 S.Ct. 2446 (1987), explicitly limited Smith to the context of federal parole guidelines and their related regulations. 998 F.2d at 727.

> Our decision in Smith is distinguishable from the present case for reasons outlined by the Supreme Court in Miller v. Florida. . . . First, in contrast to cases which "have held that the federal parole guidelines are not `laws' for purposes of the Ex Post Facto Clause," Florida regards its sentencing guidelines as having "the force and effect of law." Second, the Miller Court indicated that the Florida sentencing guidelines do not "simply provide flexible `guideposts' for use in the exercise of discretion: instead, they create a high hurdle that must be cleared before discretion can be exercised." Finally, "the revised [sentencing] guidelines directly and adversely affect the sentence petitioner receives.

Id. at 725 (interior citations omitted).

Applying the Miller analysis to the DMO at issue in the instant case, the Court must consider the following questions: (1) does Arizona regard its prison regulations to have the force and effect of law; (2) does the regulation at issue simply provide a flexible guidepost for use in the exercise of

discretion, or does it create a barrier that must be cleared before discretion can be exercised; and (3) does the regulation at issue directly and adversely affect the sentence plaintiff received.

In Sanchez v. Ryan, the Arizona Court of Appeals concluded that "[a]dministrative rules and regulations may have the force and effect of law, Herzberg v. David, 27 Ariz. App. 418, 420, 555 P.2d 677, 679 (App. 1976), and therefore may be subject to the ex post facto prohibition." 870 P.2d at 1187. The Sanchez Court cited Arnold v. Arizona Board of Pardons and Paroles, 167 Ariz. 155, 158, 805 P.2d 388, 391 (App. 1991). In that case, involving a regulation relating to commutation applications, the court wrote:

> Appellants argue that the ex post facto clause applies to administrative regulations that are adopted pursuant to statute, in this case, A.R.S. § 31-401(F). The board does not dispute that fact, and neither do we.

Arnold, 805 P.2d at 391. In this case, DMO 91-03 was adopted pursuant to A.R.S. § 41-1604.07(D). Accordingly, the first prong of the Miller test is satisfied.

Second, under DMO 91-03 a prisoner must have a P score of less than 4 and an I score of less than 5 in order to be considered eligible for earned release. Thus, the prison regulation at issue creates a high hurdle that must be cleared before official discretion can be exercised.

Lastly, at the time plaintiff committed the offense, an inmate was eligible for release on the date that the sum of his earned time credits and his actual time served equaled the term

of his sentence. After the implementation of DMO 91-03, an inmate was eligible for release on the date that the sum of his earned time credits and his actual time served equaled the term of his sentence, but only if the inmate has a P score of less than 4 and an I score of less than 5. Before DMO 91-03, plaintiff was eligible for release on his earned credit release date, and after DMO 91-03 he was not. DMO 91-03 applied to events occurring before its implementation and directly and adversely effected the length of plaintiff's confinement.[11]

For the foregoing reasons, the Court concludes that DMO 91-03, as applied to plaintiff, violated plaintiff's rights arising from Ex Post Facto Clause of the United States Constitution. There are no material issues of fact in dispute and plaintiff is entitled to judgment as a matter of law.

ACCORDINGLY,

IT IS ORDERED denying defendant's motion for summary judgment, (dkt. #62).

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[11] Because of the Court's conclusion, the Court need not address plaintiff's due process or equal protection claims. The Court notes, however, that these claims were not raised or argued in either party's motion for summary judgment.

In addition, in his motion for summary judgment, plaintiff argues that this Court must determine defendant's claim of qualified immunity pursuant to Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034 (1987). Anderson stands for the proposition that qualified immunity is applicable when a reasonable officer could have believed his actions to be lawful in light of clearly established law. 483 U.S. at 642, 107 S.Ct. at 3040.

Defendant does not respond to plaintiff's assertion.

Qualified immunity is an affirmative defense, Harlow v. Fitzgerald, 457 U.S. 800, 815, 102 S.Ct. 2727, 2736 (1982), and the burden of proving the defense lies with the official asserting it. Id. at 819, 102 S.Ct. at 2738.

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IT IS FURTHER ORDERED granting plaintiff's motion for summary judgment (dkt. 71).

IT IS FURTHER ORDERED denying plaintiff's motion to print Court's opinion (dkt. 72).

IT IS FURTHER ORDERED denying as moot plaintiff's motion for the Court to review the legal arguments in his amended complaint (dkt. 73)

IT IS FURTHER ORDERED denying plaintiff's motion for judgment (dkt 82).

IT IS FURTHER ORDERED denying plaintiff's objections to the Magistrate Judge's order filed March 17, 1994 (dkt 83).

IT IS FURTHER ORDERED denying as moot plaintiff's motion for the Court to review a state court decision (dkt. 85).

IT IS FURTHER ORDERED setting a preliminary pretrial conference on Monday, October 31, 1994 at 9:30 a.m. to discuss further proceedings in this matter.

DATED this 26 day of September, 1994.

Earl H. Carroll
United States District Judge

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APPENDIX D

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP - 6 1996

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

LESLIE ANDREW HANLON, Plaintiff-Appellee, v. SAMUEL A. LEWIS, Defendant-Appellant.	No. 95-15869 D.C. No. CIV 92-1506 PHX EHC ORDER

Before: REINHARDT and HALL, Circuit Judges, and MERHIGE, District Judge.*

The panel has voted to deny ~~appellee~~ APPELLANT's petition for rehearing. Judges Hall and Reinhardt have voted to reject the suggestion for rehearing en banc and Judge Merhige so recommends.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

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* The Honorable Robert R. Merhige, Jr., Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

APPENDIX E

Sec.
23. Passes and purchase of transportation by public officers; inapplication to national guard.
24. Enacting clause of bills; initiative bills.
25. Continuity of governmental operations in emergency.

PART 1. INITIATIVE AND REFERENDUM

§ 1. Legislative authority; initiative and referendum

Section 1. (1) **[Senate; house of representatives; reservation of power to people]** The legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any Act, or item, section, or part of any Act, of the Legislature.

(2) **[Initiative power]** The first of these reserved powers is the Initiative. Under this power ten per centum of the qualified electors shall have the right to propose any measure, and fifteen per centum shall have the right to propose any amendment to the Constitution.

(3) **[Referendum power; emergency measures; effective date of acts]** The second of these reserved powers is the Referendum. Under this power the Legislature, or five per centum of the qualified electors, may order the submission to the people at the polls of any measure, or item, section, or part of any measure, enacted by the Legislature, except laws immediately necessary for the preservation of the public peace, health, or safety, or for the support and maintenance of the departments of the State Government and State institutions; but to allow opportunity for Referendum Petitions, no Act passed by the Legislature shall be operative for ninety days after the close of the session of the Legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the Departments of the State and of State institutions; Provided, that no such emergency measure shall be considered passed by the Legislature unless it shall state in a separate section why it is necessary that it shall become immediately operative, and shall be approved by the affirmative votes of two-thirds of the members elected to each House of the Legislature, taken by roll call of ayes and nays, and also approved by the Governor; and should such measure be vetoed by the Governor, it shall not become a law unless it shall be approved by the votes of three-fourths of the members elected to each House of the Legislature, taken by roll call of ayes and nays.

(4) **[Initiative and referendum petitions; filing]** All petitions submitted under the power of the Initiative shall be known as Initiative

APPENDIX F

ncies; conciliation assistance in confi-
city; information as confidential; re-
of investigative or prosecuting func-
alties.

ELLANEOUS PROVISIONS

dings: trial by jury, criminal practice,
ent; civil contempt proceedings.
crimes and criminal contempts.
General; denial of equal protection on
eligion, sex or national origin.
not to affect authority of Attorney
or intervene in actions or proceedings.
not to exclude operation of State laws
sistent State laws.
tions.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub.L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1979 Acts. House Report No. 96–548, see 1979 U.S. Code Cong. and Adm. News, p. 2609.

Codifications

R.S. § 1979 is from Act Apr. 20, 1871, c. 22, § 1, 17 Stat. 13.

Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

Amendments

1979 Amendments. Pub.L. 96–170 added "or the District of Columbia" following "Territory," and provisions relating to Acts of Congress applicable solely to the District of Columbia.

Effective Dates

1979 Acts. Amendment by Pub.L. 96–170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub.L. 96–170, set out as a note under section 1343 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Attorney's fees to prevailing party other than United States, see 42 USCA § 1988.
Citizenship clause, see USCA Const. Amend. XIV, § 1.
Conspiracy to interfere with civil rights, damages for, see 42 USCA § 1985.
Institutionalized persons required to exhaust remedies to maintain action under this section, see 42 USCA § 1997e.
Jurisdiction of district courts of civil rights actions, see 28 USCA § 1343.
Privileges and immunities clauses, see USCA Const. Art. IV § 2, cl. 1 and Amend. XIV, § 1.

LIBRARY REFERENCES

Administrative Law

Defense against discrimination, complaint, see West's Federal Practice Manual § 16321 et seq.
Discriminatory zoning, see West's Federal Practice Manual § 12763.
Exhaustion doctrine, application of, see Koch, Administrative Law and Practice § 13.5
Federal jurisdiction, see West's Federal Practice Manual § 7521 et seq.
Habeas corpus, see Koch, Administrative Law and Practice § 8.15.
Immunity, see Koch, Administrative Law and Practice § 10.78
Preliminary procedures, see West's Federal Practice Manual § 16161 et seq.
Preparation of complaint, see West's Federal Practice Manual §§ 7966, 9084.
Procedural techniques of constitutional damage suit, see Koch, Administrative Law and Practice § 7.42

APPENDIX G

Law Review Commentaries

Juvenile justice in Arizona, corrections. 16 Ariz.L.Rev. 393 (1974).

Public employees, dismissal, property and liberty limitations. Ariz.State L.J. 4, 1977, p. 835.

§ 41-1604. Duties and powers of director

A. The director shall:

1. Be responsible for the overall operations and policies of the department.

2. Maintain and administer all institutions and programs within the department, including prisons, reception and diagnostic centers, conservation camps, community correctional centers and such other facilities and programs as may be required and established for the custody, control, correction, treatment and rehabilitation of all adult offenders committed thereto.

3. Be responsible for the administration and execution of all parole services, to include those for adult offenders released in accordance with decisions of the board of pardons and paroles.

4. Develop a program to provide uniform statewide parole field services in this state.

5. Be responsible for the development of policies and programs which shall be recommended to the governor and the legislature for the purpose of improving the various adult correctional programs of the state.

6. Develop and establish a uniform statewide method of reporting statistics as related to this chapter.

7. Employ deputy directors and other key personnel based on qualifications prescribed by the director which require education and practical experience.

8. Adopt rules pursuant to chapter 6 of this title[1] for the development of incentives to encourage good behavior and the faithful performance of work by prisoners.

B. The director may:

1. Adopt rules to implement the purposes of the department and the duties and powers of the director.

2. Take any administrative action to improve the efficiency of the department, including but not limited to the following:

(a) Create new divisions or units or consolidate divisions or units.

(b) Transfer employees between the various divisions and units of the department.

(c) Shift duties between divisions or units.

(d) Delegate authority to appoint, hire, terminate and discipline all personnel of the department, including specialists and consultants.

(e) Transfer adult inmates between adult institutions or adult facilities.

APPENDIX H

Earned release credits; forfieture; restoration

A. Each prisoner classified as parole eligibile, class one, pursuant to §41-1604.06, shall be allowed the following release credits:

1. If sentenced upon a first conviction other than pursuant to §13-703 or other than for a felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another, every two days served within class one shall be counted as an earned release credit of one day.

2. If sentenced pursuant to the provisions of §13-604, subsection A, or upon first conviction of a class 4,5, or 6 felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious injury or any other provision of law which prohibits release on any basis until serving not less than than one-half the sentence imposed by the court, every two days served within class one shall be counted as an earned release credit of one day.

3. If sentenced according to any other of the provisions of §13-604 or any other provision of law which prohibits release on any basis until serving not less than two-thirds the sentence imposed by the court, every three days served within class one shall be counted as an earned release credit ofe day.

B. Release credits earned pursuant to subsection A of this section shall not reduce the term of imprisonment imposed by the court on such prisoner, nor reduce the sentence imposed on the prisoner for the purpose of determing such prisoner's parole eligibility.

C. Upon reclassifacation of a prisoner resulting from such prisoner's failure to adhere to the rules and regulations of the department or failure to demenstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment, or training program, the director may declare any and all release credits earned by the prisoner forfited. In the discretion of the director such release credits may be subsquently be restored. The director shall maintain an account of release credits earned by each prisoner.

D. The director, According to the rules promulgated by the department, may authorize the release of any prisoner who who has earned release credits which, when added to the time served by the prisoner, equal the sentence imposed by the court which shall be the prisoner's earned release credit date. A prisoner on earned release credit release is not under the control of the department and the department is not required to provide parole services or otherwise supervise any prisoner released, except that the department may revoke the release of the prisoner until the final expiration of his sentence if the department has reseason to beleive that the prisoner has engaged in crimminal conduct during the term of his release.

Added by Laws 1978, ch. 164,§18, eff. Oct.1, 1978. Amended by Laws 1980,Ch. 229,§ 45, eff. April 23, 1980; Laws 1986, Ch. 200, §2

APPENDIX I

A.S.P. LAW LIBRARY

ARIZONA DEPARTMENT OF CORRECTIONS

DIRECTOR'S MANAGEMENT ORDER 91-03

A.S.P. LAW LIBRARY

SUBJECT: Earned Release Credit Date		EFFECTIVE: May 1, 1991
OPR: AI	SUPERSEDES: N/A	DISTRIBUTION: A

1.0 PURPOSE: To insure that inmates approved for an Earned Release Credit Date release meet Department and statutory criteria.

2.0 AUTHORITY:

A.R.S. 41-1604, Duties and Powers of the Director.

A.R.S. 41-1604.07, Earned Release Credits; Forfeiture; Restoration.

A.R.S. 31-414, Absolute Discharge of Parolee; Effect; Notice to Victim.

3.0 APPLICABILITY: This order is applicable to inmates in an ADC institution eligible for Earned Release Credit Date release, as defined in this order, and staff responsible for preparation of inmates' cases for release.

3.1 Any releasee in the community, on Home Arrest or Work Furlough status automatically reverts to earned release credit date release status on the eligibility date with verification of the Time Computation Unit and without completion of the PRIE form.

3.1.1 The inmate may receive a Temporary Release to the earned release credit date release if departmental criteria are met.

3.1.2 This automatic reversion does not occur if the inmate on Home Arrest or Work Furlough status has been granted and has accepted parole.

4.0 DEFINITIONS:

4.1 Committing Offense - The offense for which the inmate was convicted.

4.2 Correctional Classification Profile (CCP) - The summary of a series of factors and ratings used in the inmate classification system.

4.3 Earned Release Credit Date (ERCD) - Pursuant to A.R.S. 41-1604.07, the date when release credits earned and actual time served (includes credit for presentence incarceration), equal the sentence imposed. This release only applies to offenses committed on or after August 13, 1986 for inmates who meet criteria and is granted by the Director.

5.0 THE ORDER:

5.1 Eligibility Requirements - Inmates with date of offense on or after August 13, 1986, who meet the following criteria shall be approved for Earned Release Credit Date release:

5.1.1 Inmates must have a Correctional Classification Profile with a Public Risk factor of 3 or below and an Institutional Risk factor of 4 or below.

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5.1.2 The committing offense must allow for earning release credits; and

5.1.3 The inmate must earn the release credits.

5.1.4 Special categories of inmates eligible for Earned Release Credit Date consideration are:

5.1.4.1 Inmates not eligible for provisional release due to the length of sentence or who become eligible for provisional release and earned release credit date at the same time due to the length of sentence.

5.1.4.1.1 Inmates who are denied a provisional release due to an Institutional Risk Factor rating of 4.

5.1.4.2 Inmates who receive sentence modification and become immediately eligible for an earned release credit date.

5.2 Ineligible for Earned Release Credit Date Release - The following categories of inmates shall be ineligible for Earned Release Credit Date release:

5.2.1 Inmates whose committing offense occurred prior to August 13, 1986.

5.2.2 Inmates with Public Risk Score of 4 or above or an Institutional Risk Score of 5 as a result of the Institutional Classification and Central Office Classification review.

5.2.3 Inmates who are not eligible for provisional release due to a Public Risk Score of 4 or above or an Institutional Risk Score of 5 as a result of the Institutional Classification and Central Office Classification review. (See ADC Policy #303.10, Provisional Release.)

5.2.4 Inmates who are denied Earned Release Credit Date release by the Administrator of the Offender Services Bureau, when it is determined that such denial is in the best interests of the public's health, safety, or welfare. The denial, with stated reasons, shall be provided to the inmate.

5.3 New Commitments to the Department - Within 20 workdays of the inmate's commitment to the Department, the Time Computation Unit of the Offender Services Bureau shall project the Earned Release Credit Date for those inmates earning release credits who are not eligible for provisional release due to sentencing or statute.

5.3.1 When an inmate who is eligible for an Earned Release Credit Date enters the Reception Center, the Institution Classification Committee shall complete the Institutional Endorsement Form, ADC Form #70501069, at the time of the inmate's initial classification. The Institutional Classification Committee shall submit the completed form to Central Classification for processing.

92-31

POLICY RECEIPT NEWSLETTER

June 9, 1992

Pen and Ink Change to DMO 91-03, Earned Release Credit Date, dated May 1, 1991. This change is effective June 24, 1992.

Add the following information to section 1.0:

The Director retains the absolute discretion to modify this Order, as necessary, or to ignore it altogether as circumstances require. Such override may be made in the Director's sole and absolute discretion when needed to promote institutional safety and security or to account for other unique concerns. This Order is not a binding constraint on the Director's administrative decision-making process, but merely serves as a guide to the Director's proper exercise of his sole discretion.

Pen and Ink Change to IMP 207.0, Religious Activities, Observances and Visitation, dated November 24, 1989. This change is effective June 24, 1992.

Delete subsection 6.1.1.2

In subsections 6.2.4.1, 6.4.3.1, and 6.5 delete wording that is struck over with dashes (—) and insert wording that is printed in bold type and underlined.

6.2.4.1 The senior institutional chaplain shall ~~supervise~~ **coordinate** all religious activities, groups, and religious volunteer groups while they are in the institution.

6.4.3.1 ~~Emergency~~ religious visits may, at the discretion of the ~~Warden or Superintendent~~, **Deputy Warden, Administrator, or their designee**, be permitted at any time.

PLEASE INFORM THE PLANNING BUREAU (542-3691) OF ANY CHANGES OF POLICY LIAISONS AND/OR MAILING ADDRESSES.

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5.4 All Inmates Who Meet Criteria - The inmate's assigned Correctional Program Officer (CPO) or concurrent custody case manager shall complete the Institutional Endorsement Form for all inmates who meet the criteria outlined in Section 5.1.4.1 and 5.1.4.2.

5.4.1 The Classification and Parole Supervisor (CPS) of each institution shall ensure the Institutional Endorsement Form is completed at each level and the inmate is notified if determined to be ineligible.

5.4.2 The completed form shall be submitted to the Institutional Classification Committee.

5.4.3 The Institutional Classification Committee shall update each eligible inmate's Correctional Classification Profile 150 days prior to the release eligibility date and shall submit the Institutional Endorsement Form to Central Classification for processing.

5.4.3.1 An inmate determined not eligible for Earned Release Credit Date release shall remain in institutional status until the inmate's sentence expiration date, unless released by other means.

5.4.4 Within thirty days of Central Classification's receipt of the Institutional Endorsement Form, the Administrator, Offender Services Bureau, shall ensure that:

5.4.4.1 Central Classification verifies the updated CCP and endorses or denies the Earned Release Credit Date release.

5.4.4.2 Central Classification forwards the Institutional Endorsement Form to the Time Computation Unit.

5.4.4.3 If approved, the Time Computation Unit verifies the release eligibility dates, annotates the AIMS DT08 screen indicating final release confirmation and forwards a copy of the completed Institutional Endorsement Form to the institution.

5.4.4.4 If denied, the Time Computation Unit recalculates the inmate's release dates, notifies the institution and sends a copy of the completed Institutional Endorsement to the institution.

5.5 Inmates Who Do Not Meet Provisional Release Criteria - Inmates reviewed for provisional release who do not meet criteria shall also be reviewed for Earned Release Credit Date eligibility.

5.5.1 The Institutional Classification Committee and Central Office Classification shall enter on the Institutional Endorsement Form if the inmate is eligible for Earned Release Credit Date release. No further review is required at that time to determine eligibility.

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5.6 Subsequent Eligibility After The 150-day Administrative Review - If a normal reclassification occurs after the 150-day administrative review which subsequently deems the inmate eligible for Earned Release Credit Date release, the inmate shall be determined to be eligible up to 30 days before the Earned Release Credit Date.

5.6.1 The Institution Classification Committee shall complete the required sections of a new Institutional Endorsement Form within two workdays and forward it to Central Classification. The eligibility shall be noted as a subsequent reclassification in the Comments section.

5.6.2 Central Classification shall verify the updated CCP and forward it to the Time Computation Unit.

5.6.3 The Time Computation Unit shall process the Institutional Endorsement Form within five workdays and notify the institution by AIMS message router.

5.7 Appeal - Inmates may appeal the rating on the updated CCP to the Administrator, Offender Services Bureau, within five workdays of receipt of notification of the verified CCP.

5.7.1 Upon receipt of the appeal, the Administrator, Offender Services Bureau, shall have ten workdays in which to respond. His decision shall be final.

5.8 Concurrent Custody/Interstate Compact

5.8.1 For concurrent custody inmates serving an Arizona sentence in another jurisdiction, the inmate's Institutional Endorsement Form shall be calculated within 20 workdays of receipt of the certified commitment by Central Office. The Institutional Endorsement Form for Interstate Corrections Compact cases shall be calculated and processed in accordance with section 5.1.1, 5.4 and 5.5.

5.8.2 The concurrent custody case manager shall request a current progress report on concurrent custody inmates 180 days prior to the release eligibility date. Central Office Classification shall determine the eligibility of the inmate within ten workdays of receipt of the progress report and forward the Institutional Endorsement Form to the concurrent custody case manager.

5.8.2.1 The inmate's CCP rating shall be determined by Central Office Classification based on progress reports from the other state or federal jurisdiction.

5.8.3 If the inmate meets the eligibility criteria, the concurrent custody case manager shall notify the other jurisdiction and drop the detainer on a concurrent custody case.

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5.8.4 The Central Office Special Services Section shall coordinate the Earned Release Credit Date release process for Interstate Corrections Compact inmates with the concurrent custody case manager.

5.8.5 If the inmate does not meet the eligibility criteria, the Special Services Officer shall notify the other jurisdiction, and the concurrent custody case manager shall complete a new time computation.

5.9 Rescission of an approved Earned Release Credit Date release prior to the release of an inmate - If an inmate's CCP score changes from an eligible to an ineligible score as a result of a classification hearing, or when an inmate is convicted of a Group I or II violation of the Rules of Discipline, the Warden, Deputy Warden, or Administrator shall request a rescission of the Earned Release Credit Date release by completing the required sections of a new Institutional Endorsement Form.

5.9.1 The required sections include the inmate's name, ADC#, date of birth, institution location, and the request for rescission portion of the form.

5.9.2 The completed form shall be forwarded to the Administrator, Offender Services Bureau, for review and action.

5.9.3 Inmates may appeal the rating on the updated CCP to the Administrator, Offender Services Bureau, within five workdays of receipt of notification of the verified CCP.

5.10 Release Conditions - Inmates released under Earned Release Credit Date release shall not be supervised by the Department of Corrections.

5.10.1 Inmates released on provisional release shall be released from supervision on their Earned Release Credit Date, unless the provisional release is rescinded.

5.10.2 Inmates who have signed a Provisional Release Waiver, who are eligible for Earned Release Credit Date release, shall be released on their Earned Release Credit Date.

5.10.2.1 Inmates may <u>not</u> waive an Earned Release Credit Date release.

5.11 Inmates Released on Parole - The Time Computation Unit shall calculate an Earned Release Credit Date for all inmates released on parole to include all release credits earned.

5.11.1 Inmates shall not earn release credits while on parole.

5.12 Absolute Discharge - Inmates on parole status shall be referred to the Arizona Board of Pardons and Paroles for consideration of Absolute Discharge on their Earned Release Credit Date.

5.12.1 The Time Computation Unit shall compile an Earned Release Credit Date/Absolute Discharge eligibility list each month.

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5.12.2 The Earned Release Credit Date/Absolute Discharge eligibility list shall be sent to the Arizona Board of Pardons and Paroles and the Community Corrections Division sixty days prior to the Earned Release Credit Date.

5.12.3 The Community Corrections Division shall review the list and forward any comments or recommendations to the Board of Pardons and Paroles thirty days prior to the Earned Release Credit Date.

5.12.4 If the Board of Pardons and Paroles denies the Absolute Discharge, the inmate shall remain under parole supervision until the Sentence Expiration Date or until released by other means.

5.12.5 If the Board of Pardons and Paroles approves the Absolute Discharge, the Director of the Department of Corrections shall release the inmate from parole supervision and issue an Absolute Discharge, ADC Form #41002001.

6.0 IMPLEMENTATION: Implementation shall occur on the effective date of this Order. This Order shall remain in effect until replaced by permanent Department policy or rescinded.

Samuel A. Lewis,
Director

Forms
Certificate of Absolute Discharge, ADC Form #41002001.
Institutional Endorsement Form, ADC Form #70501069.

APPENDIX J

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ARIZONA

DEPARTMENT OF CORRECTIONS

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OFFENDER CLASSIFICATION SYSTEM (OCS)

Classification Operating Manual

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January 1, 1991

Preface

In 1986 when the first Offender Classification System manual was introduced there was an overcrowding situation that created pressure to implement more efficient and cost effective policies and procedures for classifying inmates. In addition, the need for more facilities created the demand for good solid classification data to use in planning the number and types of beds that would be needed. Moreover, the legislature was concerned that the Department was over-classifying its prisoners. The use of a valid equitable, and objective classification system can reduce over-classification, thereby decreasing the cost associated with unnecessary incarceration or excessive security requirements. While complete objectivity in classifying inmates is probably not achievable, the Department chose to implement an objective system because of the following advantages:

- Easier evaluation and monitoring by using standardized criteria and procedures that facilitate review and assessment;
- Consistency is enforced in decision making by requiring decision makers to use standardized criteria and apply them in the same equitable manner each time;
- Assurance is provided that everyone is aware of decision making methods by including rules that are highly visible;
- Controls are placed on discretion by permitting overrides of the classification process, but only within explicitly stated parameters;
- Information and data collection are greatly improved by promoting accurate, consistent and comprehensive accumulation of statistical information.

The 1986 Offender Classification System Operating Manual was introduced into the Department in August of that year to resolve problems with the classification methods that were employed at that time. Very few implementations of a different system or methodology are without a full complement of system "bugs." Within the first year, problems surfaced with the 1986 edition of the Offender Classification System Manual. The manual was modified and reissued in March of 1987. In 1989 an independent consulting agency was asked to evaluate the status of the Arizona Department of Corrections Offender Classification System after two years of operational experience had been acquired by staff throughout the department. This initiated the process of applying our overall departmental experience during those two years of practical usage to updating the manual for optimum practical application.

Based on the evaluation results and recommendations presented by the consultants, the Bureau of Offender Services, an Advisory Committee appointed from among system users, and representatives of several Departmental facilities have completed this revision to the Offender Classification System Operating Manual. This new edition of the manual incorporates many suggestions and recommendations provided over the last three years by Wardens, Deputy Wardens, Administrators, and our programs and security staff both in the institutions as well as within central office.

Among the changes within the new edition of the manual are those recommendations made by the consultants which have been accepted by the department. The content has also been changed to reflect recommendations for changes to clarify criteria or requirements. Some new material has been added based on already existing policy to enhance the manual as a more comprehensive reference. In many cases the content of proposed changes was sent to manual users for review before a final decision was made to include the material. The primary thrust of changed information is listed below.

- Initial classification criteria always scored inmates with five or more years as P-3 but reclassification did not explicitly prohibit a score of P-2 for a remaining sentence of 5 or more years. Reclassification and initial classification criteria are now consistent.

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- Inmates with disciplinary histories must now demonstrate an acceptable adjustment by maintaining an I-2 or lower score for six months before scores of P-3 or P-4 can be reduced to the lower level. This change has no impact on the inmate who, following initial classification receives, no disciplinary reports. In such cases the inmate's "P" Score will normally reduce on "schedule."

- Changes have been made within the initial classification for Institutional Risk Scoring Criteria which introduce greater compatibility between classification and levels of supervision for off-institution activities.

- Changes have been made to the initial classification of Institutional Risk Scores to allow a more realistic assessment of risk in place of the usage of an average I-3 for virtually all inmates.

- Reclassification criteria for Institutional Risk Scores have been changed to incorporate work performance into the assessment formula provided by the criteria.

- Override criteria have been introduced which allow increases in Public Risk for very serious and dangerous disciplinary violations and for both reductions and elevations of Institutional Risk Scores when criteria are met.

- Based on the objective nature of established criteria, the required number of Institutional and Initial Classification Committee Members has been reduced to two.

- Inmates have now been allowed the option of waiving appearance at classification hearings under explicitly stated circumstances.

- New assessment criteria have been included in the manual for reclassification changes to both Alcohol/Drug and Sex Offense Treatment Need Scores based on completion of appropriate program requirements.

- Additional material has been included in this edition of the manual which establishes a clear link to Numbered Policy and the Director's Management Order publications of the Department and which also provides not only guidelines on processing the many diverse documentation requirements which exist, but also sets forth all of both classification and evaluative functions performed by Institutional Classification Committees.

- The new edition of the Offender Classification System Manual also sets forth the manner in which any future changes shall be published. This should make the manual's content more amenable to timely changes. Recommendations for change developed at the institutional level which are endorsed by our Warden's and Institutional Administrator's and key management staff at central office should be forwarded to the Offender Services Bureau for consideration at anytime new proposals for change become available.

This manual includes many improvements over previous editions which are expected to increase its value. It has been enhanced by addressing all classification functions. It now represents a far more comprehensive reference source than any of the previous editions. This manual shall be implemented on the publication date indicated within its pages.

Samuel A. Lewis
Director

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CHANGE ANNOUNCEMENT

Change Number 0

ABSTRACT OF CHANGE

This change announcement has been prepared for publication with this manual as the means to illustrate the manner in which this manual shall be changed when new information or changed procedure must be disseminated. A change announcement shall have the Change Number listed as for example, Ch 1, placed with the date of the change in the upper right corner in the page header of all changed pages. Unchanged pages, even when reprinted shall bear the original date of publication. A change announcement shall present a brief abstract of the content of the changed material. Whenever a page is redone, the back side of the page must also be redone, even if there are no changes on the back side of the page. This practice allows for double-sided or duplex printing. If more pages are to be inserted into the manual than were originally present, the extra pages shall be numbered with the preceding page and a decimal point with progressing numbers. For example if four (4) pages are to be added between page 5 and page 6 the inserted pages would be numbered 5.1, 5.2, 5.3 and 5.4 and so on if more pages were required. Pen and ink changes shall not be used. New pages shall be published in all cases. Instructions for removal of old pages and insertion of new pages shall follow the ABSTRACT on the CHANGE ANNOUNCEMENT as shown below. The change announcement sheets shall be numbered consecutively with lower case Roman Numerals, just as this example announcement is numbered.

PAGE CHANGE LIST

Remove Pages	Insert Pages
23 through 28	23 through 28.4
37 through 38	37 through 38
49 through 52	49 through 52

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THIS NOTE PAGE HAS BEEN PROVIDED TO ALLOW THE MANUAL USERS TO INSERT NOTES INTO THE MANUAL WHEREVER NEEDED. IT IS RECOMMENDED THAT ALL NOTES BE MADE ON THE ORIGINAL PRINTED COPY OF THE MANUAL. THIS PAGE SHOULD BE PHOTOCOPIED. THE PHOTOCOPIES CAN THEN BE INSERTED AND USED FOR NOTES ANYWHERE IN THE MANUAL. THE PAGE NUMBER HAS BEEN ELIMINATED SO USERS CAN WRITE-IN THEIR OWN PAGE NUMBERS AT THE BOTTOM.

NOTES

CHANGE ANNOUNCEMENT

Change Number 1

ABSTRACT OF CHANGE

This change announcement includes two categories of changed information: (1) Corrections of typographical errors and changes in text for clarity; and (2) new or updated information.

1. Corrections: A number of typographical errors in the original manual published on 01-01-91 have been corrected. Error corrections and changes in text which have become necessary for clarity account for the majority of substituted pages within Ch 1.

2. New Information:

   a. New Public Risk (P) Score reduction guidelines for women have been included in Section E, Reclassification.

   b. Because of changes which have occurred within ADC Numbered Internal Management Policies governing the grant of Provisional Releases and Earned Release Credit Releases all inmates must be afforded "due process" when Institutional Release Endorsements are processed. See Ch 1 PAGE 55 LINES 24-33.

   c. New guidelines regulating the authority and responsibilities of ICC chairpersons have been added to Section F, Institutional Classification Functions. Rules governing witnesses at ICC hearings are included in these new guidelines.

PAGE CHANGE LIST

To post this change to the Classification Operating Manual, remove the pages indicated below from the current Manual and insert the listed pages attached to this change announcement. The old removed pages of the manual may be filed and kept for reference in answering any future litigation filed on issues which have since been changed.

Remove Pages	Insert Pages
5 and 6	vii, 5 and 6
13 through 16	13 through 16
21 through 24	21 through 24
29 and 30	29 and 30
33 through 44	33 through 44
49 and 50	49, 49.1, 49.2 and 50
53 through 56	53 through 56
A-1 and A-2	A-1 and A-2

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b. SCORE INTERPRETATION

To illustrate the concept of the CCP the following *graphic representation* of the CCP as applied to a case example is provided. Inmate Bob B. has been classified with correct Need Scores and appropriate Subcodes have been assigned to describe Bob's case and his needs.

Inmate: Bob B.

Public Risk Needs Score:	P-3-A(VIOLENCE)
Institutional Risk Needs Score:	I-4-S(SUICIDE THREAT)-G(GANG AFFILIATION)
Medical and Health Care Needs Score:	M-4-T(TEMPORARY)
Mental Health Needs Score:	MH-2
Education Needs Score:	E-5-N(NOT MOTIVATED)-C(HISTORY IS CONFIRMED)
Vocational Training Needs Score:	V-3-M(MOTIVATED)-U(TRAINING IS UNCONFIRMED)
Work Skill Needs Score:	W-2-M(MOTIVATED)-9.00(DMS JOB CODE #)-C(CONFIRMED)
Alcohol/Drug Treatment Needs Score:	A/D-3-M(MOTIVATED)-U(HISTORY IS UNCONFIRMED)
Sex Offense Treatment Needs Score:	S-1
Proximity to Residence Needs Score:	R-4-F(FAMILY NEEDS/ASSIGN CLOSE TO FAMILY RESIDENCE IF POSSIBLE)

CORRECTIONAL CLASSIFICATION PROFILE (CCP)

Need Area	Public Risk Needs (Security)	Institutional Risk Needs (Custody)	Medical and Health Care Needs	Mental Health Needs	Education Needs	Vocational Training Needs	Work Skills Needs	Alcohol/ Drug Treatment Needs	Sex Offense Treatment Needs	Proximity to Residence Needs
Code	P	I	M	MH	E	V	W	A/D	S	R
5	5	5	5	5	(5)	5	5	5	5	5
4	4	(4)	(4)	4	4	4	4	4	4	(4)
3	(3)	3	3	3	3	(3)	3	(3)	3	3
2	2	2	2	(2)	2	2	(2)	2	2	2
1	1	1	1	1	1	1	1	1	(1)	1
Sub-Code	A	S-G	T		N-C	M-U	M 9.00 C	M-U		F

Bob is a moderate public risk,[P-3] primarily due to his violence[A] history while in the community. He is a serious institutional management problem[I-4] requiring close supervision because he is a suicide threat[S] and is gang affiliated[G]. He has a serious but temporary[T] medical problem[M-4] which will require treatment for up to 90 days. He is fairly emotionally stable but prone to periods of minor instability[MH-2]. Bob is illiterate having no formal education[E-5], and shows little motivation[N] to program in this area. He appears highly motivated[M] toward vocational training[V-3], however, his past training has not been confirmed.[U] He has substantial work skills[W-2] and would best be employed as a carpenter[9.00]. His skill has been confirmed[V] in this area. He has a moderate substance abuse problem.[A/D-3] He seems interested in participating in an alcohol/drug education program[M]. His history substance abuse has not been confirmed. Bob has not been involved in any sex offenses[S-1]. His family members plan to visit as often as visiting regulations permit.[R-4] There are documented reasons for a placement close to his family.[F]

c. INSTITUTIONAL ASSIGNMENT

Arizona Department of Corrections institutions are rated for security and custody capabilities on a scale of 5 to 1 matching the OCS CCP. An institution rated at P-5/I-5 is the most physically secure providing the highest level of inmate custody supervision. An institution rated at P-1/I-1 is likewise the least secure providing only a minimal level of inmate supervision. The CCP allows for the application of a number of principles and meets departmental goals for inmate programming management.

- The CCP provides an objective system for matching inmate security and level of custody supervision needs with institutional capabilities.
- By listing inmate needs from left to right, the CCP provides for an effective balance between the primary departmental mandate of protecting the public and the most frequently considered priority of needs for rehabilitative programming.
- The CCP provides the Offender Classification System with a mechanism to reduce security, custody and institutional need scores based on successful programming and good behavior, which provides for movement of the inmate from greater to a lesser degree of supervision.
- The CCP is reassessed at six-month intervals providing for score changes based on recent program accomplishments.
- Ideally all inmate scores should decrease over the length of confinement, however, the CCP provides for elevation of scores and transfer to higher security/custody levels based on unacceptable disciplinary records and behavior which may threaten the safe, secure and orderly operation of the institution.

The Correctional Classification Profile scores used within the Offender Classification System are compared with a series of chart matrixes listing institutional capabilities in areas such as security, custody, medical services, and program availability to accomplish the "best" match between the inmate's needs assessment and his institutional placement.[1] Generally the first four need factors listed in the profile, Public Risk, Institutional Risk, Medical and Health Care, and Mental Health Care needs determine the inmate's institutional assignment. All inmates may not have their needs met for all factors of their CCP. For example, inmates scored as I-5 for Institutional Risk Needs and V-5 for Vocational Training Needs may not be able to participate in a vocational training program until their Institutional Risk (custody) Score is reduced to a level where extensive supervision is not required whenever inmates are outside of their housing unit.

For most need score Codes, symbolized by alphabetic letters (P, I, M, MH, E, V, W, A/D, S, R), followed by a numerical rating, there are also subcodes to refine and provide additional information within that needs area. Subcodes are used to further define the institutional setting required by the inmate's needs.

This section of this manual serves only as an introduction. Section B defines the terminology.[2] Beginning in Section C, the criteria used to develop an inmate's CCP is provided for Initial Classification. Section D sets forth interpretations of the scoring criteria and the procedures for Reclassification. The other Sections of this manual provide guidelines and procedure required to effectively implement ADC Numbered Policies in all areas addressed by Classification Committees and Programs Staff with classification and related responsibilities. Various Appendixes at the end of this manual provide information concerning institutional capabilities.

---

[1] Inmates convicted of Driving While Intoxicated (DWI) or related offenses are classified in the same manner as all other inmates, but are only assigned to a DWI facility. Their P/I scores are listed in the AIMS computer file as DWI. Their P/I scores are recorded on the AIMS DT08 Screen instead of on the DI49 Screen as is the case for most other inmates. The exception to this procedure applies when there are other ruling offenses involved and/or the inmate is an escape risk or a management risk.

[2] Terminology which is defined by statute is not addressed within Section B, Definitions. The user of this manual must read the appropriate section the Criminal Code, Title 13, and/or policy to obtain definitions of terminology not defined within this manual.

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Facility Override: Assignment of inmates to different institutional placements than indicated by the correctional classification profile (CCP) based on "aggravating" or "mitigating" factors. For example, inmates with P3/I3 scores may be assigned to facilities for inmates with scores of P2 based on "mitigating" factors in the inmate's history and behavioral adjustment which warrant placement in the lesser security and custody of P2 institution.

Initial Classification: The process of rating the needs of each inmate newly received by the department and matching the inmate's needs to the capabilities of one or more departmental institutions.

Initial Classification Committee: A classification committee, within the Arizona Department of Corrections reception center, composed of two (2) or more members who conduct initial classification reviews. A staff member certified or knowledgeable in classification procedures chairs the committee.

Inmate(s): A person adjudicated as an adult and committed to the Department by any court of record, or who is confined therein under the provisions of an agreement or compact to which the State of Arizona or the Department is a party. Inmates are resident within departmental institutions (See definition of "offender" listed in this section).

Instant Offense: In common usage this term refers to the immediate offense(s) which led to the inmate's current sentence or which involves the circumstances under consideration.

Institution(s): Any property or building assigned to, used by or under the control of the Department of Corrections or any of its individual units or facilities. This meaning is not limited to the area inside the fences, security perimeter or main buildings of any facility or unit.

Institutional Classification Committee (ICC): A committee, within an institution other than a reception center, composed of at least two (2) or more staff members who conduct reclassification hearings of all types. A staff member certified or knowledgeable in classification procedures chairs the committee. The Warden, Deputy Warden or Administrator may determine the number of committee members above two (2) who shall serve on Classification Committees (See Classification Officer).

Institutional Release Endorsement (IRE): Documentation indicating whether or not the inmate meets or does not meet current criteria established by ADC Numbered Policy for Provisional Release and/or Earned Release Credit Release. The IRE must always be submitted to reflect the inmate's current CCP status. IRE is prepared on the Institutional Release Endorsement, ADC Form 10501069.

Institutional Risk: A factor, used for both initial classification and reclassification, that indicates the likelihood an inmate will be disruptive to the safe, secure and orderly operation of an institution.

Institutional Risk (I) Score: A score assigned to the institutional risk factor, ranging from 5 to 1, with 5 representing the greatest need for staff supervision, and 1 representing the least need.

I-5 An inmate classified to this institutional risk level presents a substantial risk of disruption to the safe, secure and orderly operation of the institution. An I-5 inmate should be confined in an institution that is intended to provide a high level of control. Housing in this institution must be capable of securing an inmate within a unit at night, or at any other time necessary, and must be capable of providing single cells when warranted. Each cell must be capable of indefinitely containing an inmate who makes a consistent and continuous effort to disrupt institutional order and discipline.

Movement of an I-5 inmate should either be under escort or direct supervision. An I-5 inmate has limited program access because of the potential for disruptive behaviors.

I-4 An inmate classified to this institutional risk level presents a significant risk of disruption to the safe, secure and orderly operation of the institution. An I-4 inmate should be confined in an institution that is intended to provide a substantial level of control. Housing in this institution must be capable of securing an inmate within a unit at night, or at any other time necessary, and must be capable of providing single cells when warranted. Each cell must be capable of containing an inmate who makes a consistent and continuous effort to disrupt institutional order and discipline.

Movement of an I-4 inmate should be restricted and supervised. I-4 inmates have limited program access.

I-3 An inmate classified to this institutional risk level presents a moderate risk of disruption to the safe, secure and orderly operation of the institution. An I-3 inmate should be confined in an institution that is intended to provide a moderate level of control. Housing in this institution must be capable of securing an inmate within a double occupancy unit at night, or within a single cell at any other time necessary. The normal housing of inmates should generally not exceed double occupancy cells.

Movement of an I-3 inmate should be under staff supervision and frequent intermittent staff observation should be afforded. An I-3 inmate may access all internal institutional programs and work assignments.

I-2 An inmate classified to this institutional risk level presents a minimal risk of disruption to the safe, secure and orderly operation of the institution. An I-2 inmate may be confined in an institution which may provide extensive perimeter security, but minimal internal controls. Housing may consist of dormitories, multiple occupancy rooms, and or individual rooms.

An I-2 inmate has somewhat restricted movement inside the facility and is supervised on an intermittent basis. An I-2 inmate may access all inside programs and institutional work assignments.

I-1 An inmate classified to this institutional risk level presents little or no institutional management problems. Housing in this institution may consist of dormitories, multiple occupancy rooms, and/or individual rooms.

An I-1 inmate generally has unrestricted movement within the facility and is only intermittently supervised. An I-1 inmate may access all inside programs and institutional work assignments.

Mitigating Circumstances: Circumstances surrounding an inmate's committing offense(s) and/or institutional behavioral adjustment that indicates the inmate is likely to present a decreased risk to the public and/or to the safe, secure and orderly operation of the institution, which warrants a lower public risk and/or institutional risk score.

Offender(s): A person who is under departmental supervision or control who was adjudicated as an adult and who has been previously committed to the Department by any court of record or who has been confined therein under the provisions of an agreement or compact to which the State of Arizona or the Department is a party. It should be noted that an inmate is an offender, but not all offenders are inmates. Some offenders are participating in a supervised release status and are not in an inmate status during this supervised period of time. This is important, because it has significant impact on the offender's time computation, should release status be revoked.

Operating Manual: A departmental publication (i.e., this manual) which prescribes the guidelines and criteria to be used in administering the Offender Classification System (OCS) in accordance with ADC Numbered Internal Management Policies and Director's Management Orders.

Override: A decision by the Central Classification Office, based on either "aggravating" or "mitigating" circumstances, to assign an inmate higher or lower public risk and/or institutional risk scores and/or to an alternative institutional placement of higher or lower security and/or custody levels than is designated by either the initial classification or reclassification process. Overrides may be recommended by individual Classification Officers, Classification Committees or by the Warden, Deputy Warden or Administrator.

Parole Eligibility: That status which occurs when inmates have served the required statutory time of their sentence(s) and are eligible for release to parole status upon approval by the Arizona Board of Pardons and Paroles. This time of eligibility is stated as the Parole Eligibility Date.

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Parole Class Hearing: A hearing conducted by an Institutional Classification Committee for the purpose of reviewing an inmate's current parole eligibility class placement and determining whether or not the inmate should be placed in a higher or lower parole eligibility class. All regular six-month (180 day) classification review hearings are also parole class hearings. Parole eligibility classification must, by law, be reviewed every six months.

Perimeter: The barrier, whether physically constructed, painted or designated, that establishes the point beyond which an inmate cannot proceed without staff authorization.

Protective Segregation (PS): A classification status and housing situation which may be approved to isolate an inmate either, voluntarily or involuntarily, from the inmate general population when it has been determined by procedures set forth in ADC Numbered Internal Management Policies, that the inmate's life or safety is jeopardized by his presence in the general population.

Protective Segregation Committee (PSC): A Protective Segregation Committee is a special session of the Institutional Classification Committee convened for the purpose of recommending, to the institutional Warden, Deputy Warden or Administrator, approval or disapproval for the placement of an inmate into voluntary or involuntary protective segregation status.

Protective Segregation Hearing: The classification hearing afforded an inmate who has requested placement into voluntary protective segregation status because the inmate believes his life or safety is jeopardized, or who is being recommended for involuntary placement based on information available to staff that indicates the inmate's life or safety may be jeopardized.

Provisional Release Eligibility (PRE): To be considered "elicible" for a provisional release (a supervised release status established by law), the inmate's committing offense(s) must have occurred between August 7, 1985 and August 12, 1986, and the inmate shall have served not less than one calendar year of the imposed sentence and be within the range of 180 to 30 calendar days of completing all sentences imposed, or the inmate's committing offense(s) must have occurred on or after August 13, 1986, and the inmate shall have served not less than one calendar year of the imposed sentence and shall be within the range of 180 to 30 calendar days of the Earned Release Credit Date on all sentences imposed. All "eligible" inmates do not "qualify" (i.e., "Meet Criteria") under current criteria established by ADC Numbered Internal Management Policy, however all "eligible" inmates must be reviewed by the Institutional Classification Committee and their status in regard to criteria verified. See definition of PRIE and the appropriate Numbered IMP.

Public Risk: A factor used for both initial classification and reclassification that indicates the degree of risk to the public community should the inmate escape and the degree of need for greater or lesser physical/structural, external and internal security, to insure that effective custody of the inmate is maintained.

Public Risk (P) Score: A score, assigned to the public risk factor, ranging from 5 to 1, with 5 representing the greatest need for external and internal physical and structural security, and 1, representing the least need.

P-5 An inmate classified to this public risk level presents a high risk to the public community should he escape from departmental custody. This inmate generally should be confined in an institution that is intended to provide a high level of security. Housing in this institution must be capable of securing an inmate within a unit at night, or at any other time necessary, and must be capable of providing single cells when warranted. Each cell must be capable of indefinitely containing an inmate who makes a consistent and continuous effort to escape.

Movement of an P-5 inmate must be confined to a limited area supporting all required services.

A P-5 inmate must be confined in an institution with a double-fence perimeter or wall, with at least two independent methods of observing the perimeter. The perimeter typically is in the sight lines of a main perimeter tower providing one of two methods of observing the perimeter. There must be a perimeter patrol with a response capability for apprehension of an escapee.

P-4 An inmate classified to this public risk level presents a substantial risk to the public community should he escape from departmental custody. This inmate should be confined in an institution that is intended to provide a substantial level of security. Housing in this institution must be capable of securing an inmate within a unit at night, or at any other time necessary, and must be capable of providing single cells when warranted. Each cell must be capable of containing an inmate who makes a consistent and continuous effort to escape.

A P-4 inmate should be confined in an institution with a double-fence perimeter or wall. There must be at least two independent methods of observation for each sector of the perimeter, one of which is continuous, direct observation from towers. There must be a perimeter patrol with a response capability for apprehension of an escapee.

P-3 An inmate classified to this public risk level presents a moderate risk to the public community should he escape from departmental custody. A P-3 inmate should be confined in an institution that is intended to provide a moderate level of security. Housing in this institution must be capable of securing an inmate within a unit at night, or at any other time necessary. A P-3 inmate may be housed in single cells, multiple occupancy rooms, or in dormitories where continuous supervision is possible.

A P-3 inmate should generally be confined in an institution with at least a double-fence perimeter. There must be at least two methods of observation, which may include a combination of direct observation from internal posts and electronic monitoring systems in addition to intermittent perimeter patrol.

P-2 An inmate classified to this public risk level presents a generally low level of risk to the public community should he escape from departmental custody. A P-2 inmate should be confined in an institution that provides dormitories, multiple occupancy rooms or individual rooms for housing.

A P-2 inmate should be confined in an institution with at least a single fence which serves as a line of demarcation and is necessary for the explicit enforcement of rules but is not intended to function as a physical containment barrier by itself. There should be at least one method of observing the perimeter.

P-1 An inmate classified to this public risk level presents minimal or no risk to the public community should he escape from departmental custody. This inmate generally should be confined in an institution where housing consists of dormitories, multiple occupancy rooms, or individual rooms.

A P-1 inmate should be confined in an institution where the perimeter is generally a line of demarcation establishing the institutional boundary. No physical containment (perimeter) or unit and/or room confinement capability is necessary, except for a small number of rooms that may be used for short-term confinement.

Reclassification Review Hearing: A scheduled hearing afforded an inmate at intervals of six-months by the Institutional Classification Committee to review and consider increasing or decreasing the inmate's public risk, institutional risk and institutional needs scores which comprise the Correctional Classification Profile (CCP). This type of hearing is automatically scheduled by the AIMS program whenever another new classification action is entered on the inmate's AIMS DI49 Screen.

Reclassification: The scheduled process of reviewing the needs of each inmate within the Department and matching the inmate's needs to the capabilities of one or more institutions.

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(2) Commitment Documentation Examination: The offender shall be interviewed by an Intake Officer to verify the legality, completeness and accuracy of the commitment documents. Documents may include: court orders, jail adjustment reports, requests for jail time earned and the offender's commitment order. Any irregularities or possible discrepancies in the legality of the offender's commitment documents shall be reported to the Reception Center Administrator or Institutional Deputy Warden. As a minimum, the following documentation shall be present or the offender shall not be admitted.

- A correctly certified copy of the commitment order must be present.
- A copy of the Pre-sentence Investigation Report (PSI) when available to the sending jurisdiction.

(3) Medical and Health Care Screening: The offender shall be interviewed and examination documents shall be examined to determine needs for currently required medications and or continuing medical or health care needs, and shall be assessed to determine the needs, if any, for psychological evaluation or psychiatric examination.

(4) Orientation: Offenders shall be oriented to provide an effective level of understanding concerning: the Arizona Department of Corrections Rules of Discipline and general behavioral rules and expectations; institutional housing rules and regulations; the Offender Classification System, classification criteria and institutional assignment procedures; staff responsibilities, and the role of the Correctional Program Officer (CPO); education, vocational training, and program opportunities available within the department.

2. ASSESSMENT

Each offender is assigned a Correctional Program Officer (CPO) to supervise the offender's initial adjustment to the department, to provide the offender with counseling services, and to perform the initial assessment of the case for Initial Classification and institutional assignment. The assessment process consists of a battery of tests, an in-depth interview with the offender, and detailed evaluation of case documents and information acquired from other agencies concerning the offender's background and criminal history, if any.

a. TESTING

The Correctional Program Officer (CPO) in consultation with staff who administer and score the battery of tests listed below shall determine the correct scoring values as described by criteria in the next section of this manual for the offender's initial institutional programming needs. Testing results available for this purpose include results of the following tests.

- Wide Range Achievement Test (WRAT)
- CAQ
- 16 Personality Factor Test
- Culture Fair IQ Test

b. INTERVIEW

The CPO shall conduct an interview or interviews with the offender to obtain required information to be used with available documentation, commitment papers, FBI rap sheets, NCIC check results, detainer information, test results, pre-sentencing reports (PSI), probation officer reports (POR) etc to develop the information required for the offender's initial classification into inmate status. Specific areas of inquiry shall include the following:

- Circumstances of the offense.
- Social and criminal history,
- Enemies, gang affiliation, and/or other protective segregation issues, and
- Institutional program needs and projected release date.

Section D. Initial Classification

1. INITIAL CLASSIFICATION SCORE SHEET (ICSS)

The Initial Classification Score Sheet (ICSS) is the primary tool for developing an inmate's Correctional Classification Profile (CCP) soon after the inmate is received into departmental custody at the Reception Center. The ICSS is completed by the Classification Officer/CPO and forwarded to the Initial Classification Committee. The Initial Classification Committee reviews the recommendations of the Classification Officer and either approves or modifies the recommendations. The ICSS is then forwarded to the Reception Center Administrator who evaluates the Initial Classification Committee's recommendations and either approves or modifies the recommendations. The ICSS is then forwarded to the Central Classification Office for final approval or modification of the inmate's initial CCP and first institutional placement.

A total of ten (10) factors are initially scored and the results recorded on the ICSS. These factors and the staff responsible for providing input to the scoring process are:

CCP Factors	Code	Responsible Staff Specialist
Public Risk	(P)	Classification Officer
Institutional Risk	(I)	Classification Officer
Medical and Health Care	(M)	Medical Specialist
Mental Health Care	(MH)	Mental Health Specialist
Education	(E)	Classification Officer/Testing Administrator[3]
Vocational Training	(V)	Classification Officer/Testing Administrator[3]
Work Skills	(W)	Classification Officer
Alcohol/Drug Abuse Treatment	(A/D)	Classification Officer/Mental Health Specialist[3]
Sex Offense Treatment	(S)	Classification Officer/Mental Health Specialist[3]
Proximity to Residence	(R)	Classification Officer

The ICSS should be typed or hand-printed. Cursive handwriting is prohibited except for appropriate signatures. The Reception Center Administrator's copy of the ICSS shall be separated from the other copies of the form. All remaining copies of the ICSS, ADC Form 70501130, will be forwarded to the Central Classification Office with the Reception Center's Summary Admission Report, the Inmate Status Change Chrono, ADC Form 40000009, recording the inmate's parole class status following Initial Classification, and copies of other documents as may apply to any specific case. Prior to forwarding case packets to Central Classification, all Initial Classification ICSS case packets will be assembled, as prescribed by policy and listed on Reception Center Initial Classification Change Sheets, ADC Form 41003002, not to exceed fifteen (15) cases, and attached to each Change Sheet. Required case information entries must be entered into each inmate's AIMS computer file prior to 0800 hours of the next business day.

[3] Institutional Need Scores will be determined by consultation between the staff specialists listed as responsible for development of the score. The Classification Officer is responsible for recording the Need Score on the ICSS.

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2. INITIAL CLASSIFICATION EXCEPTION CASES

a. NEW OFFENSE PAROLE VIOLATORS

Inmates returned to the Department with a new offense who are on parole at the time the new offense was committed shall be classified in the same manner as any new admissions to the Department, except that their Public Risk (P) Scores shall not be lower than at their date of release to parole if released within the last twelve (12) months. The Classification Conversion Processing, Appendix C shall be applied to the Public Risk Score of inmates released more than twelve months ago. The Public Risk Score after conversion, or the Public Risk Score for the new offense, which ever is higher shall be used. The Initial Classification Score Sheet (ICSS) shall be completed and/or the Reclassification Conversion Worksheet as required. See also Section D3b(1)(a), (Page 20, Lines 38-44).

b. TECHNICAL VIOLATORS OF A SUPERVISED RELEASE OR PAROLE

Inmates returned to the Department as the result of technical violations of either parole or a supervised release shall be classified using the Reclassification Score Sheet (RCSS), ADC Form 70501131. The violation shall be treated as a major or minor rule violation as may be appropriate to the actual violative behavior. Scoring of the technical violation shall be approximated as much as possible with comparable major or minor disciplinary rule violations.

3. CLASSIFICATION SCORING CRITERIA

The scoring criteria in this Section of this Operating Manual apply to both Initial Classification and Reclassification actions. Additional guidelines and criteria which are applicable only to Reclassification are included in Section D of this manual.

a. PUBLIC RISK SCORE

The inmate's Public Risk (P) Score is determined by the highest rating assigned to any of eight (8) public risk criteria. For example, if an inmate has a score of 2 on seven of the eight criteria, but has a score of 4 on a single criterion, the inmate's public risk score would be 4. Should an inmate receive multiple ratings of 4 on several of the criteria, again, the inmate's public risk score would still be a 4.

The two primary issues that staff must consider in assigning an inmate a P-Score are the potentials for violence and escape. Since the P-Score is generally an indicator of the inmate's threat to the community it is important that Department staff are readily able to identify the extent to which these factors may have influenced the assignment of the inmate's P-Score. Special Subcodes have been designated to represent both violence and escape factors. Subcodes will not usually be recorded on the ICSS at Initial Classification. The source of information for the scores on each of the eight elements of the score criteria, however, shall be recorded in parentheses () next to each score listed within the top section of the ICSS form.

Subcodes shall be used on the RCSS forms, when applicable, for all reclassification actions. Evaluation of the inmate's initial classification CCP, (i.e., the inmate's history) and the inmate's actual behavioral performance during the first 180 day period shall be used to determine whether or not either or both of the two (2) available Public Risk Subcodes should be applied to the inmate's public risk score.

Public Risk Score Subcodes:

A = Violence - refers to inmates who are likely to be violent and assaultive, and therefore pose a special threat to the public should they escape or for any reason be able to have unsupervised contact with the public.

E = Escape - refers to inmates who have a history of past escapes or who are chronic escape risk problems, and are therefore likely to attempt escape at any time that security and/or custody are reduced.

Example Rating/Subcode	Inmate Description
P-4-E-A	Inmate who is considered to be a serious escape risk and is likely to be violent should escape be successful.
P-4-E	Inmate has established an habitual pattern of attempted or successful escape but has shown no special tendency toward violence.

(1) Public Risk Scoring Criteria

Eight (8) criteria are assessed to determine the Public Risk (P) Score. The highest individual score on any of the eight criteria determines the final recommendation for the inmate's public risk level.

- Severity of Offense
- Extent of Violence in Current Offense
- Use of Weapon in Current Offense
- History of Escape
- History of Violence
- History of Confinement
- Estimated Length of Confinement
- Status of Detainers

(a) Severity of Offense: Enter the rating for the most serious offense.

5 = Murder, First Degree[4]
4 = All Class 1 and 2 Felonies
3 = All Class 3 and 4 Felonies
2 = All Class 5 Felonies
1 = All Class 6 Felonies

Severity of Offense is determined by the documented offense behavior[5] of the most severe offense(s) for which the inmate is sentenced on this period of incarceration. For example, if the description of the inmate's actual offense behavior (according to a presentence report or other authorized document) depicts an Armed Robbery (Class 2 Felony), but the inmate pled guilty to simple Robbery (Class 3 Felony), the Classification Officer would assign a rating for the more serious offense depicted by actual behavior. In this case a rating of 4, would be assigned on the basis of the actual offense behavior of the Armed Robbery, a Class 2 Felony.[6] If a documented description of the actual offense behavior is not available, the offense(s) listed on the inmate's commitment papers should be used.

Note: If the offense used for rating the severity of offense is not listed as a "serious offense," as defined in ARS Title 13 § 13-604(O), the severity of offense score shall be reduced at initial classification by one (1) level from the numerical rating based on the Felony Class of the inmate's conviction.

Example: Burglary (second degree), a Class 3 Felony, is not listed as a "serious offense" in ARS Title 13 § 13-604(O). An inmate convicted of this offense would therefore be assigned a score of 2 for the severity of offense.

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[4] Inmates under death sentence shall remain at level P-5 throughout their confinement. Only their Institutional Risk (I) Score will be subject to earned reductions.

[5] When determining "documented offense behavior" it is important to remember that using the offender's original charge(s), at the time of arrest, to determine the "severity of offense" rating, is not acceptable, unless no other information can be obtained. "Offense behavior" must be determined from the actual description of the crime which is recorded in court documents, police reports, the probation or parole officer's report and/or the offender's pre-sentence report.

[6] Armed Robbery is listed as a "Serious Offense" in ARS Title 13 § 13-604(O). In this case no reduction of the Severity of Offense can therefore be recommended. See discussion of this issue at the (Note:) above on this page.

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(b) Extent of Violence in Current Offense: Enter one of the following ratings:

5 = Death - premeditated[7] circumstances
4 = Death - unpremeditated circumstances
3 = Serious injury
2 = Threat of injury or minor injury
1 = None

The Extent of Violence in Current Offense is determined by the documented offense behavior of the most severe of the offenses for which the inmate is sentenced for this period of incarceration.[5]

(c) Weapon Used in Current Offense: Enter one of the following ratings:

3 = Weapon involved which is generally considered to be lethal
2 = Weapon involved which is generally considered to be nonlethal
1 = None

Extent of Violence - Definitions:

Lethal Weapon: Operable firearm with ammunition or with ammunition in inmate's possession; knife or blade instrument, dangerous instrument, (an instrument that under the circumstances in which it was used or threatened to be used was readily capable of causing death or physical injury); explosives, incendiary devices, etc.

Nonlethal Weapon: Instrument or item which is not generally considered as a weapon, e.g., lamp, chair, bottle, etc., but which was employed by the inmate to cause or threaten bodily injury. Also refers to inmates certified in the martial arts.

(d) History of Escape: Enter one of the following ratings:

MEN

5 = Escape/attempted escape from a secure perimeter[8] facility less than three (3) years ago, or multiple such escapes/attempted escapes within the past ten (10) years

4 = Escape/attempted escape from a secure perimeter facility over three (3) years ago but less than ten (10) years ago, or multiple such escapes/attempted escapes over ten (10) years ago

3 = Escape/attempted escape from a non-secure perimeter[8] facility less than three (3) years ago, or multiple such escapes\attempted escapes over three (3) years ago, or escape/attempted escape from a secure perimeter facility over ten (10) years ago

2 = Escape/attempted escape from a non-secure perimeter facility over three (3) years ago, or default, bail absconsion, parole or probation absconsion, unauthorized absence from the military, or escape/attempted escape during the arrest process less than three (3) years ago

1 = No escape history

[7] See ARS Title 13 § 13-1101 for definition of "premeditation."
[8] See Definitions of "secure" and "non-secure perimeters" on the next page.

WOMEN:

5 = Escape/attempted escape from a secure perimeter facility less than two (2) years ago, or multiple such escapes/attempted escapes within the past five (5) years

4 = Escape/attempted escape from a secure perimeter facility over two (2) years ago but less than five (5) years ago, or multiple such escapes over five (5) years ago

3 = Escape/attempted escape from a non-secure perimeter facility less than two (2) years ago, or multiple such escapes over two (2) years ago, or escape/attempted escape from a secure perimeter facility over five (5) years ago

2 = Escape/attempted escape from a non-secure perimeter facility over two (2) years ago, or default, bail absconsion, unauthorized absence from the military, or escape/attempted escape during the arrest process less than two (2) years ago

1 = No escape history

Consider the most serious escape or attempted escape, including the instant offense at initial classification. New Court Convictions, or conviction by an Administrative Disciplinary Committee Hearing, for escapes/attempted escapes which occur during the inmate's current incarceration will both be scored on a new ICSS. The ICSS, ADC Form 70501130, will be accompanied by an RCSS, ADC Form 70501131, and a Classification Referral Notice, ADC Form 7050114, in the same manner as any reclassification action as set forth in Section D of this operating manual. When determining the time frame of the escape use the date of conviction.

History of Escape - Definitions:

Secure Perimeter: Generally refers to a facility with an established perimeter which inmates are prohibited from breaching. The perimeter can include, but is not limited to, a wall, fence, line on the ground, etc. Also refers to an escape from an outside detail supervised by an armed officer, or from a vehicle during escort by armed staff.

Non-secure Perimeter: Generally refers to a facility which does not have an established perimeter which inmates are prohibited from breaching. This may include, but is not limited to, a work release center, community corrections center, halfway house, unsupervised work gang, etc. Also refers to an escape from an outside detail, either unsupervised, or supervised by an unarmed officer.

(e) History of Violence: Enter one of the following ratings:

4 = Convicted of multiple serious violent Class 1 and or Class 2 offenses

3 = Convicted of one (1) serious (Class 1, 2 or 3) and/or multiple minor (Class 4, 5 and/or 6) violent offenses

2 = Convicted of one (1) minor violent felony offense (Class 4, 5 or 6) and/or two (2) or more violent misdemeanor offenses

1 = None

When evaluating the inmate's History of Violence include only offenses for which the inmate has prior convictions, including juvenile offense convictions.

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(f) History of Confinement: Enter one of the following ratings:

3 = Two or more commitments to a federal or state correctional institution, county, or local detention facility

2 = One commitment to a federal or state correctional institution, county or local detention facility

1 = None

History of Confinement - Definitions:

Correctional Institution: A facility housing inmates for sentences in excess of one year, which can include juvenile facilities. Does not include pre-trial confinement or confinement for misdemeanor convictions.

Detention Facility: A facility housing inmates for sentences in excess of one year, which can include county and local detention facilities. Does not include pre-trial confinement or confinement for misdemeanor convictions.

(g) Estimated Length of Confinement: Enter one of the following ratings:

MEN:

5 = Death penalty,[9] 25 years or more
4 = 16 to 24 years
3 = 5 to 15 years
2 = 2 to 4 years
1 = Less than 2 years

WOMEN:

5 = Death penalty,[9] 40 years or more
4 = 25 to 39 years
3 = 10 to 24 years
2 = 2 to 9 years
1 = Less than 2 years

The Estimated Length of Confinement is based on the shortest possible length of stay for the longest sentence(s) imposed by the courts. The inmate's earliest possible release date[10] is used as the guideline in determining the length of time the inmate will remain incarcerated on the current sentence(s) and any future consecutive sentence(s).

When evaluating consecutive sentences for public risk, all sentences the inmate is required to serve on the current offense(s) shall be considered. For profile purposes, current offense means any and all offenses for which the inmate has sentences, even though the sentences may be consecutive. For example, if an inmate is currently beginning a sentence for burglary, but has a consecutive sentence for escaping from the county jail while awaiting sentencing on the burglary, the earliest possible release from the last sentence the inmate must serve, in this case, the escape sentence, will be used to determine the individual's estimated length of confinement. When determining the earliest possible release, the sum all consecutive sentences considered as "flat time" will be used. The earliest possible release shall be determined by subtracting six-months from the end of the last sentence, unless the commitment documents require the inmate do flat time.

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[9] Inmates under death sentence will remain P-5 throughout their confinement. Only their Institutional Risk (I) Scores may be subject to change.

[10] Early Parole, Work Furlough, Compassionate Leave Eligibility, or Home Arrest Status are not considered to be releases and shall not be used to determine the Estimated Length of Confinement rating.

(h) Status of Detainers: Enter one of the following codings:

4 = Detainer for a capital offense

3 = Detainer for a felony offense, probation/parole violation, or INS hold

2 = Detainer for a misdemeanor, fine, traffic offense, municipal ordinance violation, etc., or for an INS hold where written authority states that an inmate's security/custody level may be reduced to permit participation in programs

1 = No detainers or notification request(s) only

In rating the inmate's **Status of Detainers** consider any detainer currently on file; notification from any court that the inmate has a definite court date; any notification of pending charges; notification in the pre-sentence investigation report; or information in the FBI rap sheet that indicates the inmate has pending charges. The Classification Officer will contact the jurisdiction in situations where pending charges are listed but no trial date has been announced or detainer has been received. In situations where there is some doubt as to whether pending charges are misdemeanors or felonies, Arizona Revised Statutes (ARS) should be used to equate the out-of-state charges to Arizona standards. Parolees revoked are considered pending charges. The Classification Officer will contact the probation or parole officer to verify whether or not the pending charges are felonies or misdemeanors.

(2) Public Risk Factor Scoring

Once all of the individual public risk criteria factors have been scored, the Public Risk (P) Score is determined based on the highest of those eight (8) individual scores. The P Score is then recorded on the ICSS.

b. INSTITUTIONAL RISK SCORE

The inmate's Institutional Risk (I) Score is determined using the same method as used for the Public Risk Score. The assigned score will be the same as the highest rating given to any of the eight (8) criteria described below. For every rating given to each of eight criteria used to determine the Institutional Risk Score the source of information will be recorded in the parentheses ( ) next to the rating on the ICSS.

Subcodes are available to further describe factors related to the inmate's Institutional Risk Score. Because other indications within the initial classification process provide most of the indications necessary to score and assign the inmate to an appropriate institution, subcodes will not be developed for the ICSS. Within the first six-months of incarceration, however, applicable subcodes will be determined from the inmate's behavior and history and applicable subcodes shall be recorded on the RCSS at the inmate's first review, and on all RCSS actions that follow. A listing of subcodes follows:

Institutional Risk Subcodes:

A = Assaultive - refers to inmates with a history of assaultive behavior; it is particularly applicable to inmates who have a known history of assaultive behavior toward staff or other inmates; can be used when an inmate has established a pattern of assaulting, or victimizing others by threat of assault.

V = Victim - refers to inmates who have an established pattern of being victimized by others for whatever reason; easily threatened, or becomes involved in activities from which he accrues debts he can't pay etc.; inmate is likely to be an early candidate for placement into protective segregation status.

Q = Protective Segregation - refers to separation of the inmate from the inmate general population to insure protection when the inmate's life or safety has been jeopardized.

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(b) Community Stability: Enter one of the following ratings:

2 = Poor - Inmates in this category have experienced serious adjustment problems within the community; they have not held a job for more than six months; they have been dismissed from one or more jobs; they have had four or more misdemeanor arrests; they have no verifiable family ties (i.e., transient life style).

1 = Satisfactory - Inmates in this category have maintained employment for at least two (2) years; they have had no more than three misdemeanor arrests within the past five (5) years; they have a community support base available to them in the form of immediate family, relatives, and/or community figures.

The following considerations should be analyzed individually and in combination to derive the Community Stability Score.

- Marital/family adjustment
- Educational background
- Employment history
- Military record
- Participation in problem related self-improvement programs

(c) Adjustment During Initial Classification: Enter one of the following ratings:

5 = One or more major disciplinary violations for assault on staff, arson, escape/attempted escape or attempting to overthrow institutional authority

4 = One or more major disciplinary violations under Groups I or II, ADC Rules of Discipline

3 = One or more major disciplinary violations under Groups IV and/or V, ADC Rules of Discipline, or three or more minor violations

2 = One or two minor rule violations and/or adverse incident reports

1 = None of the above

(d) Probation/Parole Adjustment: Enter one of the following ratings:

3 = Poor - Conditions of current probation/parole were violated and probation/parole was revoked

2 = Satisfactory - Past probation/parole was satisfactorily completed with no exemplary actions or notable problems

1 = Excellent - Past probation/parole was completed with excellent ratings; or offender has never been in a probation/parole status

The following considerations should be analyzed individually and in combination to determine the Probation/Parole Adjustment Score.

- Employment adjustment
- Compliance with probation/parole rules
- Compliance with special conditions
- Family adjustment

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(e) Mental Health Adjustment:[1] Enter one of the following ratings:

3 = MH Score of 5, 4 or 3 on the Mental Health Care (MH) Needs Score

2 = MH Score of 2 on the Mental Health Care Needs Score

1 = MH Score of 1 on the Mental Health Care Needs Score

(f) Age: Enter one of the following ratings:

2 = 24 years old or less

1 = Over 24 years old

Page 22 lines 18 thru 27 of the classification Manual--
Gang Affiliation: Enter one of the following ratings:
3=Inmate has been officially identified as a gang leader, or is considered to present serious management concerns
2=Inmate has been officially identified as a gang member, but is not considered to present serious management concerns
1=Inmate has an offical history of prior gang membership, or is suspected of gang activity, or has no history of gang affiliation

(h) Substance Abuse History: Enter one of the following ratings:

3 = Serious - Drugs and/or alcohol were a serious contributing factor in the current offense(s) and any previous offense(s); pre-sentence investigation report (PSI) and/or inmate self-report may describe "addictive" behavior; inmate may have experienced chemical dependency withdrawal symptoms; addiction treatment may have been provided in a hospital or clinical setting and/or in community programs. Inmates who fit this criterion may also have a history of drug related offenses (e.g., trafficking, possession, etc.), and/or a history of arrests while under the influence of alcohol and/or drugs.

2 = Moderate - Inmates described by this criterion may have been under the influence of alcohol and/or drugs during the commiting offense(s), but would be diagnosed as "dependent" rather than "addicted." Substance abuse problems figure prominently in their lives; substance abuse may have had major impacts within their family relationships, employment, and/or traffic violation arrests; there may have been arrests for being "under the influence;" inmate may have been treated for dependency within community programs; prior to this conviction it is likely that the inmate may have been described as a recreational drug user. Also included under this criterion are individuals with a history of "successful" treatment for substance abuse with a verifiable "recovery" period of two years or less in duration.

1 = None/Minimal - This criterion applies to inmates who have never had a substance abuse problem or used illicit drugs; inmates who may have used illicit drugs, and/or used alcohol irresponsibly, but whose lives have been relatively unaffected by such abuse; and inmates who have undergone "successful" treatment for a substance abuse problem and have a verified "recovery" period of more than two years duration.

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[1] The rating for this criterion of the Institutional Risk Score is derived directly from the inmate's final rating on the Mental Health Care (MH) Needs Score of the Correctional Classification Profile (CCP).

c. MEDICAL AND HEALTH CARE (M) NEEDS SCORE

For a limited number of inmates, the Medical and Health Care (M) Needs Score is the most important factor in determining institutional assignment. This is particularly the case for those inmates rated as M-5 or M-4, where an inmate's medical needs may supersede normal institutional assignment actions criteria based on Public and or Institutional Risk. The medical needs rating is determined by Physicians and/or medical and health care specialists. The rating is recorded on the ICSS by the Classification Officer. The Criteria to be rated (P, U, L, H, E, T) are described in the following table. Some examples of rating usage and the Medical Needs Subcodes listing follow on the next page of this manual.

MEDICAL AND HEALTH CARE (M) NEEDS SCORING CRITERIA

-(P)-	M-5	M-4	M-3	M-2	M-1
PHYSICAL CAPACITY STAMINA	Severely limited physical capacity or stamina; incapable of handling work assignments and very few training assignments; specialized placement and medical care required	Limited physical capacity or stamina; incapable of handling work assignments and very few training assignments	Sustained effort for only moderate period; limited capacity for harder work or training assignments	Can exert sustained effort over long periods; is physically capable of handling most work or training assignments	Can exert maximum sustained effort over long period of time; is physically capable of handling any work or training assignment consistent with inmate's age
-(U)- UPPER EXTREMITIES	Loss or paralysis of upper extremities	Loss or paralysis of limbs making specialized work or training assignment necessary	Moderate interference; all right for short periods; can handle limited number of work or training assignments	Only slightly limited mobility; capable of handling most work or training assignments	Bones, joints and muscles are normal; no impairment of upper extremities; capable of handling any work or training assignment
-(L)- LOWER EXTREMITIES	Loss or paralysis of lower extremities; incapable of handling work assignments and very few training assignments; specialized placement and medical treatment required	Loss or paralysis of limbs making specialized work or training assignments necessary	Moderate interference; all right for short periods; can handle only limited number of work or training assignments	Only slightly limited mobility; capable of handling most work or training assignments	Bones, joints and muscles are normal; no impairment of lower extremities; can handle any work or training assignment
-(H)- HEARING	Completely deaf so that very specialized work or training assignment is necessary; requires specialized medical treatment	Deaf or so nearly so that very specialized work or training assignments are necessary	Minimal hearing 8-15 bilateral; use of hearing aid; work or training assignments require careful selection	Questionable hearing loss	Normal hearing in both ears to speech
-(E)- EYES	Completely blind in both eyes; referral to the Office for the Blind; specialized work or training assignment necessary; specialized placement and medical treatment required	Loss of vision in one eye or limited vision in both eyes; referral to Office for the Blind considered; careful selection of work or training assignments is necessary	Limited vision; better than 20/50 with binocular; use of glasses absolutely necessary; careful selection of work or training assignments is necessary	Possible use of glasses should be considered in work or training assignments	No impairment in vision; capable of handling any work or training assignment
-(T)- TEETH	Emergency or urgent treatment required for acute infection of teeth or soft tissue	Essential prosthodontic appliances are required; includes persons with insufficient teeth to masticate the basic diet or in need of appliances essential to the performance of their duties; total of 8 or more teeth missing, infected or carious	Early treatment is required to prevent development of more serious conditions; total of 5 to 7 teeth missing, infected or carious	Routine dental treatment required, but not early treatment; total of 1 to 4 teeth missing; excluding third molars; requires extractions or is carious	No dental treatment required

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(2) Education (E) Needs Scoring Criteria

E-5 = Inmate needs special diagnostic/prescriptive educational services:
(a) IQ may be below 80 or may be within or even above normal
(b) Reading and/or math scores are below 5.0 level
(c) May have been previously diagnosed as psychotically or organically impaired, mentally retarded, learning disabled, emotionally handicapped, educationally or culturally disadvantaged

E-4 = Inmate needs adult basic education:
(a) IQ may be 80 (or may be borderline)
(b) Reading and/or math scores 5.0 through 7.9
(c) May be learning disabled, emotionally handicapped, educationally or culturally disadvantaged, and may have been in Special Education
(d) Needs to improve basic skills for success in occupational or vocational training

E-3 = Inmate needs GED Certificate:
(a) Reading and/or math scores above 8.0
(b) May be learning disabled, emotionally handicapped, educationally or culturally disadvantaged, and may have been in Special Education

E-2 = Inmate needs post-secondary education:
(a) Possesses GED or high school diploma
(b) Reading and/or math scores above 10.0, or
(c) Lower reading and/or math scores require placement in College Developmental Program for remediation

E-1 = Inmate has satisfied educational needs.

f. VOCATIONAL TRAINING (V) NEEDS SCORE

(1) Introduction

The Vocational Training (V) Needs Score assesses the inmate's abilities and vocational or occupational interests. A determination of the inmate's aptitude for work and the degree of interest the individual has in a particular occupation is needed. Determination of vocational training needs scores may be based on an interview and/or test results. At the reception center the Classification Officer in consultation with test administration specialist shall determine the most appropriate level for vocational training scores. Within institutions, the appropriate level for this score shall be determined by referral to the Correctional Vocational Program Teacher.

Vocational Training Needs Score Subcodes:

M = Motivated - Inmate is interested and will to participate
N = Not Motivated - Inmate is not interested and is unwilling to participate
H = Physically Handicapped - Inmate is physically handicapped
C = Confirmed - Information provided by the inmate has been confirmed
U = Unconfirmed - Information provided by the inmate has not been confirmed

(2) Vocational Training (V) Needs Scoring Criteria

V-5 = Inmate needs basic occupational skills training:
(a) IQ may be below 80 or borderline
(b) Reading and/or math scores below 7.0
(c) May be poorly coordinated and/or mentally and/or socially retarded

V-4 = Inmate has little or no formal vocational training or demonstrated occupational skills:
(a) IQ above 80 (or may be borderline)
(b) Reading and/or math skills 8.0 or better
(c) Previous employment sporadic, unskilled labor

V-3 = Inmate has held employment as semi-skilled laborer:
(a) Reading and math skills 8.0 or better
(b) Work history indicates steady employment for one year or more in trade, craft, or other field requiring both mental and physical ability

V-2 = Inmate possesses trade or craft or other occupational skills:
(a) Inmate has trade, craft or occupational experience and/or training
(b) Stable work history in a trade, craft or other occupation for 24 consecutive months or longer in that particular trade, craft or occupation

V-1 = Inmate has been certified in a trade or holds a college degree:
Has clearly demonstrated career with no need for vocational training

g. WORK SKILLS (W) NEED SCORE

(1) Introduction

The Work Skills Needs Score assesses work habits and behaviors rather than specific job skills. The criteria for this institutional need considers work history in the community and, when applicable, performance on prior institutional work assignments.

Work Skills Need Score Subcodes:

M = Motivated - Inmate represents interest in available work and wishes to be employed
N = Not Motivated - Inmate not motivated to work
C = Confirmed - Inmate's work/job history in the community has been confirmed
U = Unconfirmed - Inmate's work/job history in the community has not been confirmed

In addition to the above listed subcodes, the occupational/trade skill codes listed within the AIMS computer program should be listed with the inmate's Work Skills Need Score. As can be seen in the example of the Correctional Classification Profile (CCP) given on Page 2 of this manual, the skills area for the inmate used in the example was skill in Carpentry, which is identified with the AIMS code 9.00 within the CCP illustration. In many cases inmates scored at the W-3 level and higher will have no particular degree of occupational, trade or craft skills. For skill levels W-2 and W-1, however, the individuals specific skill shall always be listed along with any appropriate subcodes. The work skill scores at W-2 and W-1 are specifically reserved for inmates with verifiable occupational skills and stable work histories within the community, or at least two years of satisfactory work evaluations earned while working at a skilled trade, craft or occupation while incarcerated. Occupational or vocational training for their specific skill may have been earned while incarcerated.

(2) Work Skills (W) Need Scoring Criteria

W-5 = Inmates at this level of work skills:
(a) have very poor or no work histories or refuse to work;
(b) have not held jobs in the community or institution;
(c) they have a great deal of difficulty even meeting the minimum requirements for the world of work.

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W-4 = Inmates at this level of work skills:
(a) have poor work histories marked by short-term jobs;
(b) they quit or are fired from those jobs frequently;
(c) their attitude tends to be one of hostility toward supervisors, but at the same time they require close to constant supervision to meet even minimal job requirements;
(d) they tend to loaf, cause trouble on the job site, and quit with little if any provocation;
(e) vocational training often improves their work skills.

W-3[12] = Inmates at this level of work skills:
(a) have sporadic work histories in the community;
(b) they are able to overcome minor obstacles, show up for work regularly and perform satisfactorily, but eventually either quit or are fired;
(c) they tend to expect much more satisfaction, pay, or prestige from unskilled jobs and become frustrated easily;
(d) often, however, they do hold a job for more than a year;
(e) they may have completed, but have had at least some formal vocational training and/or formal on-the-job training, but have little or no experience in the area in which they were trained;
(f) they generally function very well within the structure and supervision of an institution;
(g) additional vocational training, or specific experience in a trade, craft or occupational area in which they previously had training often improves their work skills.

W-2[13] = Inmates at this level of work skills:
(a) have stable work histories with two or more years on the same job and several to many years working within the same occupation, trade or craft;
(b) they have a positive attitude toward work and are dependable workers;
(c) they tend to value work as worthwhile endeavor and persist in spite of obstacles or frustrations;
(d) they are generally considered skilled in their respective occupation, trade or craft.

W-1 = Inmates at this level of work skills:
(a) are achievement oriented and tend to excel in their work place;
(b) they have a professional attitude toward their work and have exceptionally stable work histories;
(c) their work histories are marked by promotions and regular on the job advancements;
(d) they are highly skilled within their particular trade, craft or occupational area.

h. DRUG/ALCOHOL ABUSE TREATMENT (A/D) NEEDS SCORE

(1) Introduction

The Drug/Alcohol Abuse Treatment (A/D) Needs Score is intended to assess the need for treatment which may be identified when an inmate is newly committed or whenever inmates become involved in substance abuse related disciplinary violations after incarceration has begun. The following Subcodes apply.

Alcohol/Drug Abuse Treatment Subcodes:

W = Alcohol Abuse
D = Other Abused Substances; Drugs, toxic inhalants, etc.
M = Motivated to participate in treatment program
N = Inmate scored at level A/D-3 or higher who declines participation
C = Inmates substance abuse history and/or treatment has been confirmed
U = Information provided by the inmate concerning abuse history has not been confirmed
Z = Successful Completion of Alcohol/Drug/Substance Abuse Program

[12]To be scored at this level of work skill the inmate must have had at least some verifiable formal vocational training; inmates who complete vocational training during their incarceration may be scored at this level.

[13]To be scored at this level the inmate must have a stable employment history with at least two or more years on the same job and a clearly identifiable and verifiable occupation, trade or craft at which he has worked for at least two or more years.

(2) Alcohol/Drug Abuse Treatment (A/D) Needs Scoring Criteria

A/D-5 = Drugs and/or alcohol were a contributing factor in this and previous offenses; the presentence investigation (PSI) and/or inmate self-report describes "addictive" behavior; the inmate may have experienced chemical withdrawal symptoms; addiction treatment may have been provided in a hospital or clinical setting and/or community program(s); inmates may also have a history of drug related offenses (e.g., trafficking, possession), and/or a history of arrests while under the influence of alcohol and/or drugs.

A/D-4 = Inmates scored at this level may have been under the influence of drugs and/or alcohol during the committing offenses, but would be diagnosed as "dependent" upon one or more substances,not addicted; they may have been treated in the community for their dependency prior their conviction for the instant offense; inmates may have little history of substance abuse related to criminal activity; their substance abuse has had major lifestyle impacts relative to family relationships, employment, and/or traffic arrests (DWI).

A/D-3 = Inmates scored at this level have had periodic substance abuse problems, but have never changed their pattern of living at a result; they may have been arrested for being "under the Influence" but may not be categorized as addicted or dependent; they may be described as "recreational users;" there may be one or more family members who have a substance abuse problem.

A/D-2 = Inmates scored at this level have had a history of substance abuse that may or may not have resulted in arrests and/or convictions but, through treatment, they may be described as "recovering" and are stabilized; they may have has one or more family members who have substance abuse histories.

A/D-1 = Inmates scored at this level have never been users of illicit substances; they practice responsible use of alcohol; neither they nor any member of their immediate family have sought or received treatment or advice for alcohol/drug related problems.

i. SEX OFFENSE TREATMENT (S) NEEDS SCORE

(1) Introduction

The Sex Offense Treatment (S) Need Score is intended to assess the degree of need for participation in programs designed to address the problem of sexual dysfunction and deviant behavior.

Sex Offense Treatment Need Score Subcodes:

M = Motivated to participate in a treatment program
N = Inmate scored at level S-3 or above who declines participation
C = Information concerning the inmates case has been confirmed
U = Information provided by the inmate concerning his case has not been confirmed
Z = Successful Program Completion

(2) Sex Offense Treatment (S) Need Scoring Criteria

S-5 = Offenders who have a history of felony convictions for "serious"[14] sex offenses (Class 2 or 3) and/or other sex offenses; individuals are repetitive offenders having histories of multiple arrests for "serious" and other sex offenses; the sex offenses often involve injury to the victim or verbal threats; the offender may or may not be motivated to participate in a treatment program; the most common offense is sexual assault.

[14]The term "serious" as used in the Sex Offense Treatment Need (S) Score criteria refers to offenses listed as "serious offenses" in ARS Title 13 § 13-604(O).

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S-4 = Offenders who have a history of felony convictions for "serious"[14] sex offenses (less than three Class 2 or 3, multiple Class 3, 4, 5 and 6 offenses) and/or other sex offenses; these individuals are repetitive offenders having histories of multiple arrests for sex offenses; use of physical force or injury to the victim is usually not involved in the offense, but verbal threats may have been used; the offender's sexual deviation may be described as fixated; the offender may or may not be motivated to participate in a treatment program; the most common offenses are incest and molestation.

S-3 = Offenders who have one felony conviction for a "serious"[14] sex offense and/or multiple misdemeanor sex offenses; these offenses may include sexual assault, child molestation, contributing to the delinquency of a child, and indecent exposure to adults; unverified information may suggest that the offender has committed sexual offenses; the inmate may have participated in a treatment program such as the ADC Sex Offender Treatment Program (SOTP); the inmate may or may not be motivated to participate in a treatment program.

In addition, an offender rated at this level for sex offense treatment needs may have been incarcerated for a property or chemical addiction offense but has a significant history of being sexually victimized and a history of inability to establish productive intimate relationships; this individual may be perceived as at risk of becoming a sex offender because of the lack of coping and relationship skills and an inability to manage stress, rage, and conflicts.

S-2 = These offenders have no history of felony arrests for sex offenses; the offender has a history of misdemeanor sex offense arrests or unverified information suggests the offender has committed sex offenses; the offender may or may not be motivated to participate in a treatment program.

In addition, an offender rated as the S-2 level for sex offense treatment needs may have been previously rated at a higher level; this individual may have successfully completed a Department-recognized treatment program such as SOTP.

S-1 = These offenders have no history of felony or misdemeanor sex offense convictions or arrests; in addition, the offender has not been the victim of sexual abuse; this inmate does not need sexual treatment or counseling.

Definitions:

Conviction: Because sex offenders are often found guilty of multiple counts of an offense, or are committed for several different offenses on the same commitment documents, counting the number of convictions for purposes of scoring the Sex Offender Treatment Needs Score is complex. When an offender has successfully plea bargained a sexual offense to a charge of simple assault, burglary or trespassing, etc., the actual description of the offender's behavior which depicts the sexual offense(s) shall be used for the purpose of evaluating the Sex Offense Treatment Needs (S) Score criteria. Every Count for the same offense shall be counted as a conviction, provided each count involved a different victim, or the same victim on multiple occasions through time.

For example, if an offender is found guilty of five (5) Counts of Child Molestation, and each count involved a different child or the same child on five separate dates, the inmate shall have five (5) Convictions counted against him when determining his Sex Offender Treatment Needs Score. If, however, as sometime occurs, the courts have "stacked" offenses, which involve one victim on one occasion, this situation shall be counted as one (1) Conviction. For example, an offender is committed for the offenses of one count of Sexual Abuse, a Class 5 Felony and one Count of Sexual Conduct with a Minor, a Class 6 Felony, both offenses having involved the same victim on the same date, with one occurrence on that date, in other words there was only one occurrence of the offense behavior, this situation would be counted as One Conviction.

j. PROXIMITY TO RESIDENCE (R) NEED SCORE

(1) Introduction

The Proximity to Residence (R) Need Score assesses an inmate's need to be placed at an institution as close as possible to the inmate's home, the home of the inmate's family or near the community which otherwise provides his community support base.

The first priority for placement of inmates, however, is assigned to placement of the inmate at the most appropriate level of security and custody. The second priority is allocated to placement of the inmate where there are institutional programs best suited to address the seven (7) previously discussed institutional need scores. Only after all other concerns including the best interests of the public community and the Arizona Department of Corrections have been addressed, will consideration be given to an inmate's Proximity to Residence Need Score.

The inmate's Proximity to Residence Need Score may, however, be evaluated to determine placement considerations whenever all other concerns have been served and the inmate may fit two possible placements, one close to the community of choice, and another placement which is distant.

A second condition under which placement may be given greater consideration is when there are well documented serious compassionate reasons to consider using the Proximity to Residence Need Score as justification for a placement.

Proximity to Residence Need Score Subcodes:

F = Family ties prompt the need for the inmate to be assigned to a facility near family residence

J = Employment situation requires inmate to be assigned to an institution near to the work site

(2) Proximity to Residence (R) Need Scoring Criteria

R-5 = This rating is reserved for inmates who have a documented need to be assigned to an institution in close proximity to their residence. e.g., one or more family members are handicapped and unable to travel long distances. In addition, the relationship between the offender and family should be such that regular interaction would improve the inmate's abilities to adjust both to his incarceration and his eventual return to the community upon release.

R-4 = Inmates at this level of need warrant serious consideration to be located near their families or employment due to the need for regular visitation but do not require such assignment based upon documented problems limiting the family.

R-3 = Inmates at this level of need have a substantial history of regular family contacts but no critical or immediate need to be located in an institution near them. Location near eventual employment is only a moderate concern.

R-2 = Inmates assigned this rating have received minimal family contact while confined such as sporadic visits. Location near employment is only a minor concern.

R-1 = This rating is reserved for inmates who have no family or significant others who may visit while they are confined, and/or the inmate will be released to a residence out of the State of Arizona. Location near employment is not an issue.

4. CLASSIFICATION OVERRIDE INSTRUCTIONS

There are two types of overrides which may be recommended by the Classification Officer, the Initial Classification Committee, or by the Reception Center Administrator: Score Overrides which involve recommending higher or lower Public Risk (P) Scores and Institutional Risk (I) Scores than indicated by

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application of criteria; and Facility Overrides which involve recommending an institutional assignment which is different than indicated by the Institutional Assignment Chart. Normally, when an inmate, based on the guidelines which follow, must be assigned to a higher security/custody level, score overrides are used. When, based on the guidelines which follow, it is considered appropriate to assign an inmate to a lower security/custody level, the facility override is used. While these are not absolute rules, and overrides must be handled on a case by case basis, both will generally be applied.

An override is a documented condition or fact warranting an increase or decrease in the Public Risk, Institutional Risk or the inmate's Institutional assignment. The Classification Officer should recommend an override only when normal application of criteria for the Public Risk, Institutional Risk or Institutional assignment is considered inappropriate. The Classification Officer may recommend an override, either upward or downward when there are aggravating and/or mitigating circumstances to warrant deviation from the normal application of initial classification criteria. Because overrides represent a departure from normal processing of initial classification cases, documentation justifying the override must always be submitted with the ICSS when the case is forwarded to Central Classification.

To recommend an override, the Classification Officer, Chairman of the Initial Classification Committee, or the Administrator, must check the "Override Requests: Yes" blank on the ICSS, enter the recommended P or I Score and/or the LOC of the recommended Institutional assignment and provide a brief statement justifying the override in the space following "Rationale/Comments:" on the ICSS. The supporting documentation, which served as the basis for the recommendation, must be attached to the ICSS when it is forwarded to the Central Classification Office for approval.

5. INSTITUTIONAL ASSIGNMENT RECOMMENDATIONS

The Institutional Assignment Charts at Appendix A of this manual shall be used to determine inmate institutional assignments. There are separate charts for men and women inmates. The inmate's Public Risk and Institutional Risk Scores shall be used to determine the most appropriate institution for the inmate's assignment. The assignment charts apply equally to both Initial Classification and Reclassification assignments.

For example, if a male inmate has a P/I Score of 3/3 there are five (5) possible assignments which might be made: ASPC-Perryville San Juan or Santa Cruz, ASPC-Tucson Santa Rita, ASPC-Florence South Unit, or ASPC-Douglas Mohave. If the inmate has been committed for a violent sex offense, then based on the numbers following the ASPC-FV units in the assignment chart, the choices are narrowed. The inmate could only be assigned to one of the remaining three institutions. Should there happen to be no available bed space at either of the remaining three institutions the chart may be used to determine the next most appropriate choice of institutions.

If Public Risk is the greatest concern, the inmate could be housed at ASPC-Florence Central Unit or at ASPC-Tucson Cimarron which are located, in the chart, immediately above the facilities of first choice. If the most pressing concern is Institutional Risk, moving over one column to the left identifies ASPC-Winslow Kaibab as an acceptable alternative.

Placement of overrides can be considered in much the same way. In most cases, however, placement of overrides to higher custody will also involve higher scores. Placement of overrides to higher security or custody will therefore most often be "in-matrix" at the chosen facility.

In addition to the primary considerations of the inmate's P and I scores, whenever institutions are of equal security/custody, the remainder of the inmates Correctional Classification Profile (CCP) Scores should be given consideration in the final choice for the inmate's placement.

6. ICSS PROCESSING AND APPROVAL

The Classification Officer will prepare the heading of the ICSS determining and recording the Public Risk and Institutional Risk Score and recording the source of information used to rate each criterion next of each rated criterion for both scores in both scoring columns. The Classification Officer shall then determine, in consultation when appropriate, the scores for each of the Institutional Need areas, the

recommended institutional assignment and the rationale for all initial classification recommendations, and record them on the ICSS. The Classification Officer shall inquire of inmates whether or not they agree or disagree with the recommendation in their case, and mark the appropriate block on the ICSS to advise the Initial Classification Committee Chairman of the inmate's attitude. The ICSS shall then be forwarded to the Initial Classification Committee.

The Initial Classification Committee shall then review the ICSS, discuss the case with the inmate concerned, and either, recommend approval or modify the Classification Officer's recommendations. The Chairman shall then determine whether or not the inmate agrees or disagrees and require the inmate to initial the appropriate block on the ICSS. The ICSS shall then be forwarded with its supporting documents to the Reception Center Administrator.

The Reception Center Administrator shall either approve or modify the committee's recommendations, cause the required entries to be made to the inmate's AIMS computer file and forward the ICSS to the Central Classification Office for final approval or modification.

The Central Classification Office shall process all ICSS actions received from the Reception Center on the same date as the actions are received. If, in the case of an individual inmate, this cannot be accomplished, appropriate Reception Center Staff shall be notified.

7. INITIAL CLASSIFICATION SCORE SHEET UPDATE: 60-DAY CLASSIFICATION REVIEW

The inmate's 60-day classification review is scheduled, and the date is listed within the AIMS Computer File, for the purpose of reviewing the inmate's behavior and the documentation available in his case to determine if the inmate's scores and institutional placement are correct. In most cases no new information or documentation will have become available to indicate that changes in the inmate's status should be considered.

If there is no reason to believe that the inmate has been placed inappropriately, the Classification Officer shall make a 60-Day Review/No Change entry on the inmate's AIMS DI49 Screen showing the date the review was conducted and the AIMS Institutional Location Code (e.g., B02, C11, A02, etc.). The inmate's P/I scores shall not be included in the required AIMS entry. The inmate's attendance at the informal 60-day review is not required when the inmate's status is not to be changed.

There are four major types of information and/or documentation that will generally automatically trigger a new classification action for the inmate. The first three types will be grounds to process a new ICSS document for the inmate. The last case can be processed with an RCSS alone.

- New Offense(s)/Additional Sentence(s) - A new ICSS shall be initiated when the convictions for new offense(s) or sentences are more severe than the offense(s) and/or sentence(s) which were considered at the inmate's Initial Classification.
- FBI Rap Sheet - A new ICSS shall be initiated, when this document lists information not available at the time of the inmate's initial classification, which indicates the inmate's P/I scores should be increased.
- Presentence Report/Probation Officer's Report or Supplements/Addendum - A new ICSS shall be initiated especially, when the PSI was not available for consideration at initial classification, and information or circumstances are cited which indicate the inmate's P/I scores should be higher.
- Status of Detainer - Whenever Detainers are added or dropped this fact must be documented by initiating an RCSS action.

All ICSS documents for 60-Day Classification Reviews to change the inmate's status must be filled out based on the results of a hearing conducted by the Institutional Classification Committee (ICC). The inmate must be informed of the ICC hearing by use of a Institution Classification Referral Notice, ADC Form 70501114, in accordance with policy. An RCSS must be submitted with the ICSS to permit the inmate the opportunity to submit information and/or comments with the ICC's recommended actions.

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NOTES

CORRECTIONAL CLASSIFICATION PROFILE (CCP) SCORE SUBCODES

PUBLIC RISK (P): [Page 14] A = Violence E = Escape	INSTITUTIONAL RISK (I): [Page 19-20] A = Assaultive V = Victim Q = Protective Segregation S = Suicide/self-harm risk G = Gang affiliation T = Temporary placement
MEDICAL AND HEALTH CARE (M): [Page 24] T = Temporary condition I = Improvable condition P = Permanent condition	MENTAL HEALTH CARE (MH): [Page 24] T = Temporary condition I = Improvable condition P = Permanent condition R = Remission S = Suicidal
EDUCATION (E): [Page 25] M = Motivated N = Not motivated K = Mentally retarded B = English as a second language C = Confirmed U = Unconfirmed	VOCATIONAL TRAINING (V): [Page 26] M = Motivated N = Not motivated H = Physically handicapped C = Confirmed U = Unconfirmed
WORK SKILLS (W): [Page 27] M = Motivated N = Not motivated C = Confirmed U = Unconfirmed If I/M has a bona fide occupation, it will be coded using the numeric/decimal codes available within AIMS.[14]	ALCOHOL/DRUG TREATMENT (A/D): [Page 28] W = Alcohol abuse D = Drug/other substance abuse M = Motivated N = Not motivated C = Confirmed U = Unconfirmed Z = Successful program completion
SEX OFFENSE TREATMENT (S): [Page 29] M = Motivated N = Not motivated C = Confirmed U = Unconfirmed Z = Successful program completion	PROXIMITY TO RESIDENCE (R): [Page 31] F = Family J = Employment

[14] The AIMS system provides a series of Job/Occupation Codes which are available for use on the DI44 AIMS Screen. While the DI44 Screen makes use of these job codes for inmate institutional job assignments, these codes are also to be used for the inmate's occupation when applying subcodes to the RCSS. The use of Job Codes as a subcode on the RCSS should not be confused with the inmate's institutional job assignment. The inmate's subcode on the RCSS will reflect street occupation, not institutional job assignments unless both happen to be the same.

Section E. Reclassification

1. RECLASSIFICATION PROCEDURES

Under normal circumstances inmates are scheduled for their first Reclassification Review six (6) months (180 Days) following their Initial Classification. The hearing date is scheduled by the AIMS computer program four (4) months (120 Days) following their 60-Day Classification Review. The inmate is given notice five (5) workdays prior to the scheduled date of their hearing on the Institution Classification Referral Notice, ADC Form 70501114. The inmate's case must be heard by the Institutional Classification Committee (ICC) within ten (10) workdays of the AIMS scheduled hearing as well as within ten (10) workdays of the date the inmate was notified of the hearing. See ADC Numbered Internal Management Policy for detailed guidelines.

The inmate's Classification Hearing, including the inmate's comments/statement, the recommendations of the ICC, the recommendations of the Warden, Deputy Warden or Administrator shall be recorded on the Reclassification Score Sheet (RCSS) and forwarded to the Central Classification Office for approval. All Reclassification Hearings are, also Parole Eligibility Classification Hearings. Therefore the inmate's current Parole Eligibility Class must be recorded on the RCSS at every hearing. If the inmate's Parole Eligibility Classification is recommended for change as a result of the Reclassification Hearing, a filled-out but unsigned Inmate Status Change chrono, ADC Form 40000009, must be submitted with the case to Central Classification. See ADC Numbered Internal Management Policy.

All inmates shall be reclassified every six (6) months (180-Days) from their last reclassification hearing. A reclassification hearing held prior to the end of a six (6) month review cycle initiates a new six (6) months cycle. The next scheduled review shall be held six (6) months thereafter. Reviews shall not be conducted to return or reinstate the inmate's original review cycle without the presence of circumstances which fully justify an Override.

All reclassification reviews held prior to the end of the six (6) month review cycle must be accompanied by supporting documentation to justify the reclassification action. When hearings are held because of disciplinary referrals to reclassification the ADC Disciplinary Form 4A must accompany the RCSS. If Detainers are to be added or dropped a copy of the Arizona Department of Corrections Form Letter to the Agency or Jurisdiction, which is placing or dropping the detainer, acknowledging receipt and action on the agency's or jurisdiction's request, must accompany the RCSS. Other supporting documents may include, but are not limited to, copies of incident reports, letters, memos, protective segregation requests or waivers, etc. Except as otherwise stated within policy, within the distribution listed on an approved ADC Form, or within this manual, the original copy of any supporting documents must never be submitted with the RCSS. The original copies of such documents must be submitted separately through records channels to insure their placement within the inmate's Institutional Records File folder, and the ADC Master Records File. See ADC Numbered Internal Management Policy for detailed guidelines concerning the submission of reclassification case packets.

It is important to understand that there are no circumstances whatsoever under which inmates may request a reclassification hearing to reduce their Public and or Institutional Risk Scores. Hearings to change scores shall occur only on the scheduled cycle, unless an exception is authorized by the Deputy Warden, Warden or Administrator based on circumstances which justify a new hearing out of normal time frames. See ADC Numbered Internal Management Policy for appropriate justifications.

All RCSS forms and supporting documents shall be assembled, listed, and forwarded to the Central Classification Office using the Classification Change Sheet, ADC Form 41003001, in strict accord with ADC Numbered Internal Management Policy. Care shall be taken to assemble packets as required by policy to insure the fastest possible processing of cases when packets arrive at Central Classification. The date the inmate's review was due shall be recorded in the 11th column of the Classification Change Sheet. Wardens, Deputy Wardens and/or Administrators and Central Classification Office Staff shall use this review date to insure that the inmate's case was heard within correct time frames. The correct date to

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be recorded in the Review Date column is the date the inmate was listed for review by the AIMS computer program prior to the current ICC hearing which is being reported on the Classification Change Sheet.

2. RECLASSIFICATION RESPONSIBILITIES AND CONSULTATIONS

The following table identifies the institutional staff responsible for the accurate determination of the required scores on the inmate's Correctional Classification Profile (CCP). While the Classification Officer, and/or the ICC Chairman or a designated ICC Member, during the ICC Hearing, shall record information directly on the RCSS, other staff specialists within the institution or complex, in certain cases as listed below, are required to determine the correct scoring information. See ADC Numbered Internal Management Policy and footnotes pertaining to the following table. An Institutional Need Consultation Referral, ADC Form 70501129, shall be forwarded by the Classification Officer, fifteen (15) workdays prior to the inmate's scheduled reclassification hearing, to the designated staff specialist responsible for reviewing selected Institutional Need Scores. Guidelines specifying when the form is required are listed in the table below and in the paragraphs of this reclassification section of this manual under procedures for reduction and/or elevation of Institutional Need Scores.

CCP Factors	Code	Responsible Staff Specialist
Public Risk	(P)	Classification Officer
Institutional Risk	(I)	Classification Officer
Medical and Health Care	(M)	Medical Specialist[15]
Mental Health Care	(MH)	Psychiatrist/Mental Health Specialist[15,17]
Education	(E)	Correctional Education Program Teacher[18]
Vocational Training	(V)	Correctional Vocational Program Teacher[19]
Work Skills	(W)	Classification Officer
Alcohol/Drug Abuse Treatment	(A/D)	Classification Officer/Mental Health Specialist[20]
Sex Offense Treatment	(S)	Psychologist[21]
Proximity to Residence	(R)	Classification Officer

[15] An Institutional Need Consultation Referral form must be completed by competent medical authority prior to reclassification whenever an inmate has a Medical and Health Care (M) Need Score of M-3 or higher.

[16] An Institutional Need Consultation Referral form must be completed prior to reclassification whenever an inmate has a Mental Health Care (MH) Need Score of MH-3 or higher.

[17] If the inmate has been, at any time since incarceration began, under the care or case supervision of a psychiatrist, the Mental Health Care (MH) Need Score shall be determined by the psychiatrist who is currently monitoring the inmate's case. The psychiatrist need not personally sign the Institutional Need Consultation Referral, but must make an entry within the inmate's treatment file stating that the MH Score is recommended for change to a new level. The medical specialist designated to review Institutional Need Consultation Referrals may then state the psychiatrist's determination of the score and sign the form.

[18] If the inmate is enrolled within an educational program, an Institutional Need Consultation Referral shall be forwarded to the teacher concerned. If the inmate has an Education Need (E) Score of E-3 or higher, but refuses to become involved in educational programming, the inmate's refusal shall be clearly noted on the RCSS at the time of the reclassification hearing. In the case of such a refusal to participate, no Institutional Need Consultation Referral form is required.

[19] If in the case of an inmate with a Vocational Training (V) Score of V-3 or higher it is determined that the inmate does not meet educational prerequisites for vocational training courses, no Institutional Need Consultation Referral is necessary. If a qualified inmate refuses training and is not involved in any educational alternatives, the inmate's refusal to participate shall be noted on the RCSS at the time of the Reclassification Hearing, but an Institutional Need Consultation Referral is not required. If the inmate is actively enrolled within a vocational training program, an Institutional Need Consultation Referral will be forwarded to the appropriate vocational training teacher, or in the case of formally recognized on-the-job vocational training programs, to the appropriate work supervisor/instructor.

[20] See Section D3h, Alcohol/Drug Treatment (A/D) Needs Score.

[21] Recommendations for the reduction of the Sex Offender Treatment (S) Need Score shall only be made by a State of Arizona Licensed Psychologist. A psychological evaluation, a statement of the recommended level for the score, and the reasons for recommending the score increase or reduction shall be included within the report. The Institutional Need Consultation Referral shall be returned, signed by the psychologist, with the report citing the new score and a synopsis of the reasons for changing the score.

3. RECLASSIFICATION CHANGES IN THE CCP

All of the criteria included within **Section D. Initial Classification**, continues to apply to the status of the inmate's CCP as was applied at initial classification. In addition, however, under ideal conditions and with an appropriate attitude toward self-improvement on the part of the inmate, the inmate's scores in all areas of the CCP should reduce with the passage of time. This section of the manual deals with the systematic process, based on the inmate's own behavior and willingness to program, for reduction and movement of the inmate to placements of lower security and custody with improved options for more programming, and the opportunity for the inmate to earn greater trust and demonstrate responsible orientations to work and self-improvement programming.

a. PUBLIC RISK SCORE

The inmate's Public Risk (P) Score was determined by the highest rating assigned to any of eight (8) public risk criteria. For example, if an inmate had a score of 2 on seven of the eight criteria, but had a score of 4 on a single criterion, the inmate's public risk score was determined to be 4. If the inmate received multiple ratings of 4 on several of the criteria, again, the inmate's public risk score was determined to be a 4.

The two primary issues that staff must consider in assigning an inmate a P-Score are the potentials for violence and escape. Since the P-Score is generally an indicator of the inmate's threat to the community it is important that Department staff are readily able to identify the extent to which these factors may have influenced the assignment of the inmate's P-Score. Special Subcodes have been designated to represent both violence and escape factors. Subcodes will not usually be recorded on the ICSS at Initial Classification. The source of information for the scores on each of the eight elements of the score criteria, however, shall be recorded in parentheses () next to each score listed within the top section of the ICSS form.

Subcodes shall be used on the RCSS forms, when applicable, for all reclassification actions. Evaluation of the inmate's initial classification CCP, (i.e., the inmate's history) and the inmate's actual behavioral performance during the first 180 day period shall be used to determine whether or not either or both of the two (2) available Public Risk Subcodes should be applied to the inmate's public risk score. It is important to remember that, while the eight criteria used to determine the Public Risk Score are available for study on the ICSS, these criteria are not included in the RCSS structure. The use of Subcodes to indicate the most critical information about the inmate is invaluable. Subcodes, when applicable to individual cases must be used.

Public Risk Score Subcodes:

A = Violence - refers to inmates who are likely to be violent and therefore pose a special threat to the public should they escape or for any reason be able to have unsupervised contact with the public.

E = Escape - refers to inmates who have a history of past escapes or are habitually an escape problem and are therefore likely to attempt escape anytime security and/or custody are reduced.

Example Rating/Subcode	Inmate Description
P-4-E-A	Inmate who is considered to be a serious escape risk and is likely to be violent should escape be successful.
P-4-E	Inmate has established an habitual pattern of attempted or successful escape but has shown no special tendency toward violence.

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(1) Public Risk Scoring Criteria

Eight (8) criteria were assessed to determine the Public Risk (P) Score. The highest individual score on any of the eight criteria determines the final recommendation for the inmate's public risk level.

- Severity of Offense
- Extent of Violence in Current Offense
- Use of Weapon in Current Offense
- History of Escape
- History of Violence
- History of Confinement
- Estimated Length of Confinement
- Status of Detainers

(2) Computation of Public Risk for Reclassification

The most difficult issue in determining the Public Risk (P) Score rating at reclassification is the need to reduce most inmates to a lower score over time. Because the P Score reflects an inmate's risk to the public and to staff, there is a strong need to insure that those inmates who continue to be a risk remain in a confinement environment that will minimize escape attempts. On the other hand, there is a competing need to reduce the security afforded those inmates who make a positive institutional adjustment, while at the same time freeing the higher security bedspace, which is always scarce, for those inmates who truly warrant a secure and controlled environment.

It is assumed for the purpose of systematic P Score reductions that those inmates initially or subsequently, because of new offenses or major disciplinary violations, who are assigned high scores, P-5 or P-4, are serious risks and as such should have their P Score reduced on a much more gradual basis than inmates initially considered lower risks (P-3, P-2, or P-1). Given this assumption, the following schedule shall be applied to Public Risk (P) Score reductions.

TIME FRAMES AND CONDITIONS FOR PUBLIC RISK (P) SCORE REDUCTIONS

Current P-Score	Time Duration at Current Score	Approved I-Score Level	Time Until Earliest Possible Release
P-5 to P-4	2 years	I-3 or lower for 6 months	No limitation
P-4 to P-3	2 years	I-2 or lower for 6 months	No limitation
P-3 to P-2	1 year	I-2 or lower for 6 months	4 years or less
P-2 to P-1	1 year	I-2 or lower for 6 months	2 years or less

The criteria set forth in the above table require that an inmate with a P Score of P-5 remain at that level for a minimum of at least two (2) years before classification staff can consider a reduction to P-4. The same approach is also employed for other P Scores reductions. For inmates who have met the above conditions, P Scores will only be recommended for reduction at the inmate's first regularly scheduled six (6) month (180 Day) review which follows the qualifying time duration spent at the current score. In other words, an inmate with a P-4 score whose last ICC hearing took place three (3) months prior to the completion of the two (2) year time frame required to reduce to P-3 will not be heard by the ICC again until the regular six-month review is due, which would be, in this case, three (3) month after the inmate completed his two (2) years as a P-4. Special hearings will not be afforded inmates for the purpose of reducing their P Scores.

(3) Limitations on the Reduction of P-Scores for High Risk Inmates

The primary mandate of the Arizona Department of Corrections is to protect the public. Inmates who constitute a threat to the public must therefore remain in an institutional environment which will preclude escape or other contact with the public. Based on this situation considerable attention has

been given to the reduction of Public Risk (P) Scores, and particularly to the reduction of scores for those inmates who receive P-5 scores upon initial classification or as a result of serious disciplinary incidents after their P scores have been previously reduced. The following range applies to all reductions of the Public Risk (P) Score:

Initial/Reclassification Score	Lowest Possible Score
P-5	P-3
P-4	P-2
P-3 through P-1	No limitation

Notes: Death penalty inmates shall not have their P Score reduced below the P-5 level at any time; An inmate shall not have a P Score reduced lower than the inmate's rating on the Detainer Status factor score.

The criteria included in the above table limit inmates, who either at initial classification, or later during confinement are assigned a P Score of P-5, to a lowest P Score reduction in the P-3 range. This does not preclude these same inmates from being assigned to a pre-release program 90 to 180 days prior to release, as long as their I Score is I-2 or lower.

(4) Increases in Public Risk Scores

Increases in Public Risk (P) Scores will generally only arise as a result of new offense data that increase the public or security risk of the inmate, or very serious disciplinary violations, which would seriously threaten the public if committed on the street, and would result in a higher public risk rating at the inmate's initial classification. See overrides.

b. INSTITUTIONAL RISK SCORE

The inmate's Institutional Risk (I) Score was determined using the same method as used for the Public Risk Score. The assigned score was the same as the highest rating given to any of the eight (8) criteria described below. For every rating given to each of eight criteria used to determine the Institutional Risk Score the source of information is required to be recorded in the parentheses ( ) next to the rating on the ICSS.

Subcodes are available to further describe factors related to the inmate's Institutional Risk Score. Because other indications within the initial classification process provide most of the indications necessary to score and assign the inmate to an appropriate institution, subcodes were not used on the ICSS. Within the first six-months of incarceration, however, applicable subcodes shall be determined from the inmate's behavior and history and applicable subcodes shall be recorded on the RCSS at the inmate's first review, and on all RCSS actions that follow. A listing of subcodes follows:

Institutional Risk Subcodes:

A = Assaultive - refers to inmates with a history of assaultive behavior; it is particularly applicable to inmates who have a known history of assaultive behavior toward staff or other inmates; can be used when an inmate has established a pattern of assaulting, or victimizing others by threat of assault.

V = Victim - refers to inmates who have an established pattern of being victimized by others for whatever reason; easily threatened, or becomes involved in activities from which he accrues debts he can't pay etc.; inmate is likely to be an early candidate for placement into protective segregation status.

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Q = Protective Segregation - refers to separation of the inmate from the inmate general population to insure protection when the inmate's life or safety has been jeopardized.

S = Suicide/Self-harm Risk - refers to inmates who have a history of suicide attempts; inmates who show a current pattern of suicidal or self-harm threats; or inmates who engage in self-destructive actions such as self-mutilation, etc.; inmates described by this subcode require closer observation and more supervision.

G = Gang Affiliation - refers to inmates with a verified history of involvement in gang activities which are disruptive to institutional order and discipline.

T = Temporary Placement - refers to inmates awaiting transfer to another institution/unit who are being housed separately; new arrivals housed separate for a period of observation and orientation; and inmates who may be in immediate danger and who require temporary segregation from the general population.

(1) Institutional Risk Scoring Criteria

Eight (8) criteria are assessed to determine the Institutional Risk (I) Score. The highest individual score on any of the eight criteria determines the final recommendation for the inmate's institutional risk level.

- Prior Institutional Adjustment
- Community Stability
- Adjustment During Initial Classification
- Probation/Parole Adjustment
- Mental Health
- Age
- Gang Affiliation
- Substance Abuse History

(2) Computation of Institutional Risk for Reclassification

Changes in Institutional Risk (I) Scores are generally less complicated at reclassification than increases or reductions in Public Risk Scores. At six (6) month (180 Day) intervals each inmate's I Score is reviewed to determine whether there should be an increase, decrease, or no change made at all. The three (3) factors that are considered in making this determination are:

- New information which would have changed any of the inmate's I Score criteria ratings at initial classification
- Disciplinary record since the last classification review
- Work/Training/Education/Treatment (WTE) Evaluation scores

(a) New Information: This is an obvious reason for change. Generally it will only apply at the inmate's 60-day review or at the first six (6) month reclassification hearing. By the time that 60-180 days has elapsed and the inmate is due a hearing most of any information which has not previously been available will have been received.

(b) Disciplinary Record: Increases in the I Score will occur on an immediate basis following a major disciplinary violation. There will, however, be instances when the classification committee will recommend an I Score increase based upon a number of minor disciplinary violations accrued over the previous classification review period (i.e. the preceding 6 month period). Guidelines for Institutional Risk (I) Score increases are included within the table matrix below. Inmates must have been found guilty of a violation in order for the violation to be considered as justification for increasing the I Score. When Regular 180 day hearings are suspended pending the outcome of a major disciplinary violation, ADC Form 41003004 shall be completed and a copy furnished to the inmate. The WHITE original and the PINK copy shall be held pending the hearing and then forwarded with the RCSS when the suspended hearing takes place. In all cases violations shall be counted against the 180 day review period during which the behavior, as reported on the Disciplinary Form 2, actually occurred. This date can be identified on the AIMS DI45 Screen, if the Disciplinary Form 2 was written on the same date that the violation occurred. The AIMS DI14 Screen shows when inmates were found guilty, not when the violation occurred.

(c) Work/Training/Education/Treatment (WTET) Evaluation Scores: Each inmate is required to receive a monthly evaluation in each area in which the inmate is programming. The required form for evaluation of all work, training, education, and treatment assignments is ADC Form 40000020. In addition, the inmate's evaluation in each area, work, training, education, and treatment must be entered into the AIMS computer file on the DI45 Screen. ADC Form 40000020 provides for three rating areas each of which allows for ratings from 0-5 points for a total possible compiled score of 0-15 points. Ratings of (3-3-3) or 9 points is satisfactory. When an inmate accrues a series of point totals, which when averaged over the preceding six-months classification review period, are within the poor or unacceptable ranges of 0-6, these evaluations may be used in consideration of the inmate's I Score assignment. To be considered all of the inmate's ratings must be listed, along with the inmate's agreement/disagreement within the AIMS computer file, or copies of all of the inmate's written evaluations must be submitted with the RCSS, again, either signed by the inmate expressing agreement/disagreement or including a statement witnessed by staff that the inmate refused to sign the WTET form.

The following matrix shall be used at all ICC Hearings for reclassification to accurately determine the inmate's appropriate Institutional Risk (I) Score level.

RECLASSIFICATION CHANGES FOR INSTITUTIONAL RISK (I) SCORES

Institutional Adjustment Previous 6-Month Period	Decrease	No Change	Increase 1 Level	Increase 2 Levels
No major violations and two (2) or less minor violations, and if averaged, WTET is higher than six (6).	Yes	No	No	No
No major violations and three (3) or four (4) minor violations, or if averaged, WTET is six (6) or lower.	No	Yes	No	No
One (1) major and/or five (5) or more minor violations.	No	No	Yes	No
Multiple major violations.	No	No	No	Yes

(3) Computation of Institutional Risk Scores for Inmates Serving a Penalty of Death

Inmates serving a death penalty sentence will have their Institutional Risk Scores reviewed and changed in the same manner as all other inmates, however, their Public Risk score will not be reduced below the P-5 level at any time.

c. MEDICAL AND HEALTH CARE (M) NEEDS SCORE

The cases of all inmates who have a Medical and Health Care Needs Score of M-3 or higher will be reviewed by medical staff prior to the inmate's classification hearing. Fifteen (15) workdays prior to the inmate's scheduled ICC hearing the Classification Officer shall forward an Institutional Need Consultation Referral, ADC Form 70501129, to the medical authority that provides service to the institutional unit or facility where the inmate is housed. Medical staff shall inform the Classification Officer of the inmate's medical (M) score and applicable subcodes, and provide a listing upon Institutional Need Consultation Referral sheet of all other departmental facilities which have the capability to provide adequate medical services to properly maintain the inmate, not later than five (5) workdays prior to the inmate's scheduled classification hearing. See Appendix B for institutional medical care capabilities.

The medical cases of inmates with an M-1 or M-2 needs score will not normally be reviewed by medical staff prior to reclassification, unless a medical condition is present which may cause an increase in the inmates Medical and Health Care Needs Score. Refer to Medical and Health Care Needs Scoring criteria and Subcodes on pages 23-24 of this manual.

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d. MENTAL HEALTH CARE (MH) NEEDS SCORE

The cases of all inmates who have an MH-3 score or higher shall be reviewed by medical/mental health staff prior to their reclassification hearing. If the inmate is now, or has been under the treatment or supervision of a Psychiatrist, the Classification Officer shall forward an Institutional Need Consultation Referral, ADC Form 70501129, to medical authority fifteen (15) workdays prior to the scheduled date of the inmate's ICC hearing. If the inmate's case is not currently being monitored or supervised by a Psychiatrist, or the individual has never been treated by a department Psychiatrist, the ADC Form 70501129 should be forwarded to the unit or complex Mental Health Care Specialist for review of the inmate's case. See the chart of responsibilities and footnotes to the chart on page 35 of this manual. The responsible staff member evaluating the inmate's case shall record the inmate's MH score and any applicable subcodes, and return the Institutional Need Consultation Referral to the Classification Officer five (5) workdays prior to the inmate's scheduled reclassification hearing.

Refer to the Mental Health Care Needs Scoring criteria and Subcodes on pages 24-25 of this manual. Also see Section E4a (Page 44, Lines 25-36), Section E4e(4) (Page 46, Lines 15-17), and Section F1g (Page 53, Lines 51-55 and Page 54, Lines 3-25). If the inmate's case requires consultation for both, an M-3 or higher score, and an MH-3 or higher score resulting from a condition under the care of a Psychiatrist, separate Institutional Need Consultation Referral forms must be used. Both issues shall not be evaluated on the same form.

e. EDUCATION (E) NEEDS SCORE

Refer to pages 25-25 of this manual for Education (E) Needs Scoring criteria and Subcodes. If an inmate has an Education Needs Score of E-3 or higher and has been enrolled in an education program, the Classification Officer shall forward an Institutional Need Consultation Referral, ADC Form 70501129, to the concerned Correctional Education Program Teacher fifteen (15) workdays prior to the scheduled date of the inmate's ICC hearing. In the case of college courses, the ADC Form 70501129 shall be forwarded to the complex Education Administrator for coordination with the college instructional staff or liaison. The education specialist staff who completes the Institutional Need Consultation Referral shall record the inmate's Education (E) Score and any applicable subcodes and shall insure the form is returned to the Classification Officer five (5) workdays prior to the scheduled date of the inmate's reclassification hearing. In all cases where the inmate has a grant, the type/name/title of the grant and its expiration date shall be recorded on the ADC Form 70501129. The date when the course(s) in which the inmate is currently participating will end shall also be recorded on the Institutional Need Consultation Referral when it is returned to the Classification Officer.

If the inmate is not enrolled in any education programs but has an Education Needs Score of E-3 or higher, and has refused to enroll to improve his educational status, an Institutional Need Consultation Referral is not required. The inmate's refusal to participate shall, however be recorded on the RCSS at the time of the inmate's reclassification hearing.

f. VOCATIONAL TRAINING (V) NEED SCORE

Refer to pages 26-27 of this manual for Vocational Training (V) Need Scoring criteria and Subcodes. If an inmate is participating in a Vocational Training Program, the Classification Officer shall forward an Institutional Need Consultation Referral, ADC Form 70501129 to the appropriate Correctional Vocational Program Teacher fifteen (15) days prior to the inmate's scheduled reclassification hearing. The teacher shall complete the form specifying the ending date for the course and assigning the inmates Vocational Training (V) Needs Score and any applicable subcodes. The Teacher shall then return the ADC Form 70501129 to the Classification Officer not later than five (5) workdays prior to the inmate's scheduled reclassification hearing.

If an inmate has a Vocational Training Need Score of V-3 or higher, but has refused to participate in recommended vocational training program, an Institutional Need Consultation Referral is not required, however, the fact of the inmate's refusal shall be recorded upon the RCSS at the time of the inmate's reclassification hearing.

g. WORK SKILLS (W) NEEDS SCORE

Refer to pages 27-28 of this manual for Work Skills (W) Needs Scoring criteria and Subcodes. The Classification Officer and the ICC shall determine the appropriate recommendation for the inmate's Work Skills Needs Score. Until such time as the inmate has the requisite training and/or sufficient experience in a recognized trade, craft or occupation Work Skills Needs Scores shall not be recommended for reduction below the W-3 level. The Work Skills Need Score is based on general requirements which are required for responsible employment. These factors can be expressed as three questions. Does the individual have a trade, craft or occupation developed through training or on-the-job experience? Does the individual have sufficient experience to be skilled in that trade, craft or occupation? Has the individual maintained responsible employment in that trade, craft or occupation for sufficient time to have established credibility as a dependable worker who gets the job done in an acceptable manner? Until these questions can be affirmatively answered by or about the inmate, the inmate does not meet the criteria of the Work Skills Need Score of W-2 or lower.

h. ALCOHOL/DRUG TREATMENT (A/D) NEEDS SCORE

Refer to pages 28-29 of this manual for Alcohol/Drug (A/D) Scoring criteria and Subcodes. If the inmate has been involved in a Department recognized Substance Abuse Program, the Classification Officer shall forward an Institutional Need Consultation Referral, ADC Form 70501129, to the Program Coordinator fifteen (15) workdays prior to the inmate's scheduled reclassification hearing. The Program Coordinator shall record the inmate's current status of progress in the program or indicate that the inmate has completed the program. If the program has been completed and the Program Coordinator believes the inmate's performance within the program merits a reduction in the A/D Score, the program Coordinator shall prepare a memorandum justifying the score reduction. The Program Coordinator shall return ADC Form 70501129 to the Classification Officer, with or without program completion memo, as the case may merit, not later than five (5) workdays prior to the inmate's scheduled reclassification hearing.
The returned referral sheet shall include the current and recommended score change and any applicable subcodes.

When inmates, who have a previous history of substance abuse, are found guilty of committing major violations involving alcohol/drugs or other substance abuse, the Alcohol/Drug Treatment (A/D) Needs Score shall be increased to level A/D-5. When inmates, who have no previous history of substance abuse, are found guilty of committing major violations involving alcohol/drugs or other substance abuse, the A/D needs score shall be increased to A/D-3. If an inmate is found guilty of a minor violation involving alcohol/drugs or other substance abuse the inmate's A/D Score shall be increased by one (1) level above the current score. The score increases based on these two contingencies shall be increased at the first reclassification hearing which occurs following the violations.

i. SEX OFFENSE TREATMENT (S) NEEDS SCORE

Refer to pages 29-30 of this manual for Sex Offender Treatment (S) Needs Scoring criteria and Subcodes. Sex Offender Treatment (S) Needs Score may be reduced by successful completion of Department recognized Sex Offender Treatment Program.

The Sex Offense Treatment Needs Score may be reduced one (1) level through successful completion of a sixteen week educational program and one six to nine month therapeutic group program coupled with individual therapy.

Another level of reduction may be earned through successful completion of other components of the department approved program. These components include: satisfactory reduction of deviant arousal (to be determined by the primary therapist); satisfactory increase to age-appropriate stimulus (to be determined by the primary therapist); significant changes in a positive manner on paper/pencil assessment instruments; continued participation in relapse prevention (support) groups; no unresolved emotional sensitivity with regard to polygraph assessment and appropriate attitude toward Sex Offender Treatment Staff and the treatment process.

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In no case shall a documented sex offender's Sex Offense Treatment (S) Needs Score be reduced below level S-2. The following documentation shall be forwarded to Central Office with the inmate's RCSS whenever a reduction in the inmate's Sex Offender Treatment Need Score is recommended. A State of Arizona licensed Psychologist involved in the treatment program in which the inmate has participated shall prepare and sign a written synopsis of the inmate's completed treatment program and a prognosis justifying the Sex Offender Treatment Score reduction. Score reductions shall not be recommended in those cases where the inmate's response to, and performance during the program would not convince a reasonable person that the inmate is unlikely to commit similar offenses in the future.

The Sex Offender Treatment Needs (S) Score can be increased if an inmate is found guilty of disciplinary violations involving sexual behavior. The initial classification criteria listed in Section D2i (Pages 29-30) shall be applied to the inmates actual "offense behavior." P/I scores may also be increased based on criteria in Sections E3b(2)(c) and Sections E4 of this Operating Manual.

j. PROXIMITY TO RESIDENCE (R) NEEDS SCORE

Classification staff shall review the Proximity to Residence Needs (R) Score to determine whether any changes have occurred in the inmate's family/community life which may warrant a change. Reassignment of an inmate based on this needs factor requires complete documentation and thorough justification. Change in this needs score will probably not be recommended frequently. When appropriate, however, assignment changes may be made if sufficient reason exists and placement options are available. See Proximity to Residence (R) Scoring Criteria and Subcodes on page 31 of this manual.

4. RECLASSIFICATION OVERRIDE INSTRUCTIONS

a. TYPES OF RECLASSIFICATION OVERRIDES

There are two types of overrides which may be recommended by the Classification Officer, the ICC, Warden, Deputy Warden, Administrator, or the Clinical Director:[22] Score Overrides which involve recommending higher or lower Public Risk (P) Scores and/or Institutional Risk (I) Scores than indicated by the application of reclassification criteria; and Facility Overrides which involve recommending an institutional assignment which is different than what is indicated by the Institutional Assignment Charts within Appendix A of this manual. Normally, when an inmate, based on the guidelines which follow, must be assigned to a higher security/custody level, score overrides are used. When, based on the guidelines which follow, it is considered appropriate to assign an inmate to a lower security/custody level, the facility override is used. While these are not absolute rules, and overrides must be handled on a case by case basis, both rules will generally be applied.

b. PROCESSING OF RECLASSIFICATION OVERRIDES

To recommend an override, the Classification Officer must recommend the override to the Chairman of the Institutional Classification Committee (ICC). The Chairman of the ICC may initiate an override or agree with a recommendation from the Classification Officer by check marking the "Override Request Yes" block on the ICSS. If the Warden, Deputy Warden or Administrator, initiates the override, the inmate's recommended reduced or increased scores shall be recorded in the Institutional Administrator's section of the RCSS. If the Warden, Deputy Warden or Administrator agrees with the ICC's recommendation, the Warden, Deputy Warden or Administrator need not record score information. The Warden, Deputy Warden or Administrator, likewise need only record an entry within the "Recommended Institutional Assignment" space only when a different institutional assignment than recommended by the ICC is selected. Regardless of the level at which the override is recommended a brief statement explaining and justifying the override in the space for the "Summary Statement of Committee," or as applicable in the Institutional Administrator's "Rationale/Comments:" space is required. The supporting documentation, which served as the basis for the recommendation, must be attached to the RCSS when it is forwarded to the Central Classification Office for approval.

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[22] When considered appropriate to the Mental Health Needs of a patient at ARTC B-Ward, the Clinical Director shall by Memorandum to the Warden, Deputy Warden, or Administrator responsible for the ARTC Institutional Classification Committee, recommend, in consonance with security/custody ratings of the Flamenco Mental Health Unit, the placement of patients who require continued behavior health treatment following discharge from B-Ward. A facility override may be recommended when considered appropriate. The Clinical Director's memo shall be forwarded with the RCSS to Central Classification for approval of the placement.

c. GENERAL GUIDELINES FOR OVERRIDES

An override is a documented condition or fact warranting an increase or decrease in the Public Risk, Institutional Risk, or the inmate's institutional assignment. The Classification Officer should recommend an override only when normal application of criteria for the Public Risk, Institutional Risk or institutional assignment is considered inappropriate. The Classification Officer may recommend an override, either upward or downward when there are aggravating and/or mitigating circumstances to warrant deviation from the normal application of reclassification criteria. Because overrides represent a departure from normal processing of reclassification cases, documentation justifying the override must always be submitted with the RCSS when the case is forwarded to Central Classification.

d. AGGRAVATING CIRCUMSTANCES WHICH MAY JUSTIFY OVERRIDES

(1) Public Risk (P) Scores may be recommended for increase based on a finding of guilty for major violations in Groups I or II of the Rules of Discipline. The recommended Public Risk Score may be rated at or below the P Score which would have been assigned for the same "offense behavior" at initial classification of a newly committed inmate. The numerical rating values used for "Severity of Offense" involved in the violation, "Extent of Violence" involved in the violation, "Use of a Weapon" involved in the violation, and the "History of Escape" as applied to a violation involving escape/attempted escape may be used to arrive at the recommended P Score.

(2) Institutional Risk (I) Scores may be recommended for a two level increase, in the absence of disciplinary violations, when it can be clearly documented that an inmate is actively involved in gang activities within his current unit of assignment, or is independently engaged in extortion or drug trafficking.

(a) In cases involving independent drug trafficking or extortion, substantial evidence must be documented in incident reports and/or from other sources. What must be specifically documented for gang involvement is that the inmate is currently communicating with known actively involved gang members. Communication is taken to include intercepted notes, correspondence, telephone calls and third party communication which may be used to pass information to and from gang members.

- Corroborating evidence from at least two independent confidential informant sources, or Incident Reports from staff who may have overheard conversations between gang members etc., will be considered. See Section D and ADC Numbered Internal Management Classification Policy for additional guidance.
- Corroborating physical evidence in the form of drug trafficking customer lists and payments, documented indications of extortion attempts, gang paraphernalia, fresh or very recent gang related tattoos, or tattoo art, any gang bookkeeping evidence which may be confiscated such as protection lists, gambling or drug debts, etc. are also very important.

(b) I&I, CIU staff or CIF reports are considered vital, when collecting evidence of communication to support active gang involvement, individual extortions or drug trafficking.

e. MITIGATING CIRCUMSTANCES WHICH MAY JUSTIFY OVERRIDES

(1) Public Risk (P) Score reductions of one level may be recommended during the inmate's first six (6) months of incarceration when an inmate's history is free of serious and/or repetitive prior convictions until the instant offense,[23] his remaining sentence is less than one year, and his disciplinary record is free of violations.

[23]The "Offense behavior" principle shall be applied to counting prior convictions as it is elsewhere in this manual. If the offender plea bargained to have "serious offense(s)" [i.e., ARS Title 13 § 13.604(O)] disregarded, or plea bargained for the purpose of not being identified as a "repetitive offender," such prior conviction(s) shall be counted under this override criteria.

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(2) Public Risk (P) Score reductions may be recommended when an inmate is violation free after his first six (6) months of incarceration; his sentence length does not preclude assignment to the next lower level of custody; and his Institutional Need Scores are no greater than the following:

(a) MH-2
(b) E-2
(c) V-2
(d) W-3
(e) A/D-3
(f) S-3

(3) Public Risk (P) Score reductions may be recommended when the inmate will, at a one level reduction, meet the policy criteria for the Level of Supervision for Inmates Participating in Off-Institution Activities at the placement to be recommended, with the exception of the time in a new unit requirement. Inmates recommended for placement in a lower custody level must also have Institutional Need Scores no greater than shown at Section E4e(2) above.

(4) Public Risk (P) Score and/or Institutional Risk (I) Score reductions may be recommended on a case by case basis when it can be demonstrated that the reduction and reassignment of the inmate is in the best interests of the department.

(5) Institutional Risk (I) Scores will generally not be considered for override reductions. Normal progression in 180 day increments will be followed. Inmates will not be reviewed early for premature I Score reductions unless their individual cases fully justify an override. Inmates must be reviewed within ten workdays prior to, or within ten workdays after their regular AIMS scheduled review date.

5. RECLASSIFICATION RECOMMENDATIONS FOR INSTITUTIONAL ASSIGNMENTS

The Institutional Assignment Charts in Appendix A of this manual shall be used to determine inmate institutional assignments. There are separate charts for men and women inmates. The inmate's Public Risk and Institutional Risk Scores shall be used to determine the most appropriate institution for the inmate's assignment. The assignment charts apply equally to Initial Classification and Reclassification assignments.

For example, based on the assignment chart for men, an inmate has a P/I Score of 3/3 there are five (5) possible assignments which might be made: ASPC-Perryville San Juan or Santa Cruz, ASPC-Tucson Santa Rita, ASPC-Florence South Unit, or ASPC-Douglas Mohave. If the inmate has been committed for a violent sex offense, then based on the numbers following the ASPC-FV units in the assignment chart, the choices are narrowed. The inmate could only be assigned to one of the remaining three institutions. Should there happen to be no available bed space at either of the remaining three institutions the chart may be used to determine the next most appropriate choice of institutions.

If Public Risk is the greatest concern, the inmate could be housed at ASPC-Florence Central Unit, ASPC-Tucson Cimarron, ASPC-Winslow Kaibab North or ASPC-Winslow Kaibab South, which are located in the chart, immediately above the facilities of first choice. If the most pressing concern is Institutional Risk, moving over one column to the left identifies ASPC-Winslow Kaibab as an acceptable alternative.

Placement of overrides can be considered in much the same way. In most cases, however, placement of overrides to higher custody will also involve higher scores. Placement of overrides to higher security or custody will therefore most often be "in-matrix" at the chosen facility.

In addition to the primary considerations of the inmate's P and I scores, whenever institutions are of equal security/custody, the remainder of the inmates Correctional Classification Profile (CCP) Scores should be given consideration in the final choice for the inmate's placement.

6. RCSS PROCESSING AND APPROVAL

a. CLASSIFICATION - A DECISION MAKING PROCESS

On the next page is a graphic representation identifying the considerations that must be involved in the classification process. Classification is ultimately a decision making process in which all relevant factors of an inmate's case must be evaluated and documentation gathered in order to support the decisions made for acceptable recommendations of the inmate's scores and placement.

CLASSIFICATION
A DECISION MAKING PROCESS

EVALUATION OF ALTERNATIVES BASED ON INFORMATION

- Disciplinary Reports
- Confidential Reports (I&I/CIU/CIF)
- Incident Reports
- Case History
- Work/Training/Treatment Progress
- Psychological Evaluations
- Medical Needs and/or Assignment Limitations
- Program Needs
- Community Support Systems

ALL DECISIONS BEGIN WITH A CLASSIFICATION HEARING

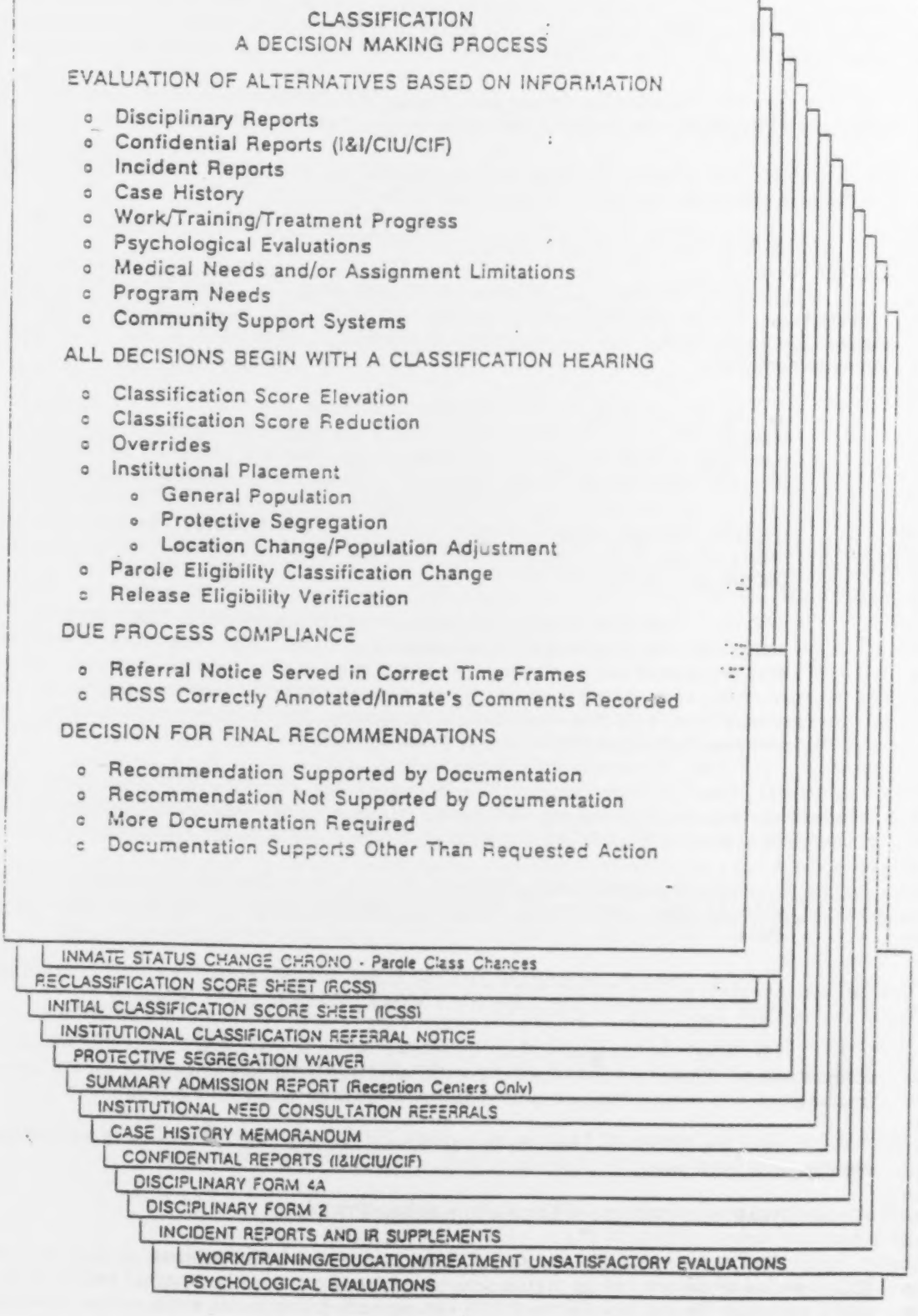
- Classification Score Elevation
- Classification Score Reduction
- Overrides
- Institutional Placement
  - General Population
  - Protective Segregation
  - Location Change/Population Adjustment
- Parole Eligibility Classification Change
- Release Eligibility Verification

DUE PROCESS COMPLIANCE

- Referral Notice Served in Correct Time Frames
- RCSS Correctly Annotated/Inmate's Comments Recorded

DECISION FOR FINAL RECOMMENDATIONS

- Recommendation Supported by Documentation
- Recommendation Not Supported by Documentation
- More Documentation Required
- Documentation Supports Other Than Requested Action



b. CLASSIFICATION OFFICER

(1) The Classification Officer shall, through the use of the Institutional Need Consultation Referrals, ADC Form 70501129, as necessary, and any other required supporting documents determine the inmate's Public Risk, Institutional Risk scores and the scores for each of the inmate's Institutional Need areas including all applicable Subcodes.

(2) The Classification Officer shall prepare the Classification Officer's section of the RCSS providing all applicable information required by the blank spaces on the form.

(3) The Classification Officer's recommendations and rationale for the inmate's scores and institutional placement shall then be presented to the ICC.

c. INSTITUTIONAL CLASSIFICATION COMMITTEE (ICC)

(1) The Institutional Classification Committee shall then review the RCSS, the supporting documents, discuss the case with the inmate concerned. See applicable hearing procedure, and procedures required for the use of confidential informant information in ADC Numbered Internal Management Policy.

(a) In accordance with hearing procedures regulated by ADC Numbered Internal Management Policy the inmate may submit a statement in writing or a summary of the inmate's comments and/or a summary of statements by witnesses requested by the inmate shall be recorded within the "Summary Statement of Inmate and/or Witness:" block on the RCSS.

(b) The "summary Statement of Inmate and/or Witness:" space is reserved for the exclusive use of comments by the inmate and shall not be used for other purposes by the Classification Officer or the ICC.

(c) If the inmate elects to submit a written statement as authorized by policy, the statement shall be submitted on an Inmate Letter , ADC Form 70501168A. In compliance with ADC Numbered Internal Management Policy only one (1) Inmate Letter form (one page only; multiple pages are not authorized) may be submitted without enclosures or attachments. The inmate has five (5) days to prepare for the hearing; written statements by inmates which do not conform to this guidance shall not be accepted by the ICC.

(2) The Chairman of the ICC or designated member shall record the committee's recommendations and rationale for the inmate's institutional placement within the "Summary Statement of Committee" space on the RCSS and fill-in all remaining space on the ICC section of the RCSS.

(a) All reclassification hearings are also Parole Eligibility Classification Hearings; the "Parole Class:" space on the RCSS shall, therefore, always indicate the inmate's current parole class.

(b) The inmates current Detainer Status shall always be recorded; the RCSS may be used to recommend a change in the inmate's Detainer Status Score.

(3) After the committee has completed its recommendations and the RCSS has been completed and signed, the Chairman of the ICC shall then determine whether or not the inmate agrees or disagrees and require the inmate to initial the appropriate space on the RCSS.

(4) The RCSS shall then be forwarded with its supporting documents to the Warden, Deputy Warden or Administrator.

d. WARDEN, DEPUTY WARDEN OR ADMINISTRATOR

The Warden, Deputy Warden or Administrator shall either approve, or deny and modify, the ICC's recommendations, direct the responsible staff member to make required entries to the inmate's AIMS computer file and forward the RCSS with supporting documents in the manner specified by ADC Number Internal Management Policy to the Central Classification Office for final approval or modification.

Section F. Institutional Classification Functions

This section of the operating manual is divided into four parts dealing with classification functions at the institutional level: classification review functions which may result in a change of status for the inmate, classification evaluation functions which do not change the inmate's status, but which may allow the inmate to take advantage of certain options, if the inmate's case meets criteria established by ADC Numbered Internal Management Policy; classification of Interstate Corrections Compact Inmates; and, appeals of decisions made in various functional processes which may result in circumstances the inmate may consider adverse.

1. ICC CLASSIFICATION REVIEW HEARINGS

There are several different types of classification reviews which may be conducted by Institutional Classification Committees under the authority of ADC Numbered Internal Management Policies at the direction of Institutional Wardens, Deputy Wardens or Administrators. See definitions in Section B of this manual. The paragraphs which follow present guidelines concerning the conduct of hearings and the types of hearings which may be conducted.

a. HEARING FUNCTIONS

(1) Preparation and Conduct of ICC Hearings:

(a) Overview: The Offender Classification System (OCS) is fundamentally a risk assessment and a needs assessment process. Recommended scores, institutional assignments and assessments for programming assignments are evaluated using objective criteria based on documented facts. Because this is the case, the scoring and assignment options that the ICC may consider prior to making a final decision are often known in advance. Documentation should be collected and reviewed to determine which options are the most appropriate. If the facts in a particular case are extensive, a memorandum detailing these facts should be prepared prior to conducting the hearing. Such a memorandum allows the RCSS to be confined to the committee recommendations and the rationale based on criteria. If an inmate feels that a detailed statement should be made in order to present all the desired considerations for the ICC review, the inmate may be encouraged to prepare the statement in advance using the Inmate Letter, ADC Form 7050116BA. Whenever an inmate is encouraged to prepare such a statement in advance, the options which the committee will consider in making the decision on the final recommendation must be explained. The final decision selecting which available options the ICC will recommend shall always be made based on the documented facts. These facts shall be considered in a fair and impartial manner in an active ICC hearing session with all members of the Institutional Classification Committee present.

(b) Responsibilities and Authority: ICC Chairpersons shall have responsibility for and exercise authority over all offender classification functions, classification hearings and other hearing functions in accordance with the guidelines and procedures established by Departmental Policy, this Operating Manual and the operating guidelines established by the chain of supervision within the institution.

- Schedule inmates for ICC hearings as required by established AIMS review dates and/or other circumstances requiring review of an inmate's classification status.

- Direct the Institution Classification Referral Notice process by providing sufficient advance notice of all regular 180 day reviews, and other reviews when practicable, to caseload CPOs, or other unit Classification Officers, to allow Institutional Need Consultation Referrals to be sent out and returned, and to allow the inmate the full five (5) day waiting period required by "due process."

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- Provide directions, guidance and on-the-spot coaching to caseload CPOs and all other Classification Officers who may be involved in conducting hearings for the classification of inmates to insure that all documentation is completed correctly and any required documentation has been copied and assembled into case packets for the hearings.

- Insure that all Institutional Need Consultation Referrals, ADC Form 70501129, which are required for any of the cases to be heard have been returned and are included in the inmate's packet prior to the hearing. ICC Chairpersons should encourage communication with individuals to whom Institutional Need Consultation Referrals, ADC Forms 70501129, will be sent so as to insure adequate understanding of Institutional Need Score Criteria.

- Conduct fair and impartial hearings during which all documentation is completed in the correct manner as required by policy and this manual, and any oral or written statement the inmate wishes to make is accurately recorded or, if written, is included with the inmate's classification case packet.

- Insure that correct AIMS data entries are made on the AIMS DI49 and AIMS DT08 Screens following all classification and/or status evaluation hearings to accurately reflect committee recommendations and the recommendations of the Warden, Deputy Warden or Administrator.

- Insure that all documents in each inmate's packet are assembled in the proper order and that each inmate's classification packet is paper-clipped to separate it from the packets of all other inmates, and that all case packets are sorted in the listed order and paper-clipped to the Classification Change Sheet.

- Waive the inmate's appearance at an ICC hearing, or grant the inmate a waiver of appearance before the ICC using applicable procedures under the conditions established by policy.

(c) Witnesses at ICC Hearings: ICC Chairpersons shall exercise authority over witnesses and the testimony of witnesses at all ICC hearings. The following guidelines are provided to implement policy and to insure the orderly and expeditious conduct of hearings.

- Witnesses shall be requested by inmates using ADC Form 41003006. Witnesses requested by inmates shall be authorized at ICC hearings based on the conclusion by the ICC chairperson prior to the hearing that the testimony to be provided will be relevant to material facts to be considered at the hearing. If such relevancy cannot be clearly established, the witness shall not be authorized. ADC Form 41003006 when used shall be forwarded with the RCSS. The ADC Number of the inmate who requested the witness shall be recorded in the space provided at the upper right corner of the ADC Form 41003006.

- If witnesses requested by the inmate are approved based on the conclusion that the testimony will be relevant, the Chairperson may at any time excuse the witness if testimony is repetitious or irrelevant. The Chairperson may also intervene in questioning or testimony to preserve order or to keep the discussion on relevant issues.

- The inmate may ask questions of a witness or another person providing testimony. Inmates shall not be present when the Author of a Confidential Report is being heard by the ICC, nor shall the inmate be permitted to question the Author of such a report.

- Character witnesses shall not be permitted to attend or witness at ICC hearings. Character is not a relevant issue and is not related to facts which may require consideration.

- No witnesses shall be permitted at ICC hearings when the sole basis for the ICC hearing is a finding of "guilty" by the Institutional Disciplinary Committee on a major rule violation.

- Attorneys shall not be permmed to be present at ICC hearings. Classification hearings are non-adversative administrative hearings. Inmate received "due process notification of the hearing and are entitled to appeal the final decision of any classification action. Representation by an attorney is neither required nor authorized.

- Inmates may request the assistance of a willing staff member to present or assist them in presenting information at ICC hearings if the staff member is reasonably available. Inmates shall request staff assistance using ADC Form 41003005. The ADC Form 41003005 shall be forwarded with the RCSS. The ADC Number of the inmate who requested the staff member as a witness, or who requested the assistance of the staff member, shall be recorded in the space provided at the upper right corner of the ADC Form 41003005.

(d) Interview of Requested Witnesses Prior to ICC Hearings: When an inmate requests a witness(es) to appear at the inmate's ICC hearing, the requested witness(es) must be interviewed, by the ICC chairperson, to determine the relevance of the information the witness(es) expects to present to the committee; or in lieu of lengthy interview(s), the chairperson may require the requested witness(es) to submit a written statement two (2) workdays prior to the hearing, which sets forth the information the witness expects to present to the committee. The chairperson shall evaluate the relevance of the information the witness expects to present and approve or deny the witness for the hearing.

(2) Functional Categories: Classification reviews may be divided into the following categories: initial classification reviews; regular six-month (180 day) classification reviews; administrative reviews; protective segregation reviews; and, parole eligibility classification reviews. The rules which must be applied by the ICC Chairman and Committee Members to the different types of hearings are governed by ADC Numbered Internal Management Classification Policy. The specific nature of circumstances subject to review by the ICC may also be specified in a Numbered Policy regulating the kind of hearing to be conducted (e.g., protective segregation hearings).

(3) Guidelines: In general, classification reviews are directed by Institutional Wardens, Deputy Wardens or Administrators, however, certain categories of reviews must be conducted, under established policy, with specified time frames or whenever specified circumstances exist. For example, regular 180 day classification reviews, and updates of initial classification reviews must be conducted within the time frame of ten (10) workdays before or after a specified review date; protective segregation reviews must be conducted anytime it is discovered, or inmates state that their safety or lives may be jeopardized within their current circumstances. See definitions in Section B of this manual and the applicable Numbered Policy for descriptions of time frames and circumstances which govern the types of classification reviews discussed below.

(4) Use of Confidential Informant Information: Information provided here must not be interpreted as replacing or in any manner modifying the rules specified by Numbered Policy for the use of information, provided by a confidential informant, at classification hearings. Current policy requires that when information from a confidential source is to be used, the confidential source must be protected without possible compromise, and the Confidential Informant Reliability Assessment Questionnaire, ADC Form 70501132, must be completed accurately to document the evaluation of the confidential informant's reliability, which must be made by the Institutional Classification Committee.

(a) Policy provides that in order to use confidential informant information at a classification hearing, the author of a written report containing information provided by the confidential informant must be interviewed by the ICC.

(b) Specific inquiries concerning the informant's reliability must be made of the author to allow the answers to all questions on ADC Form 70501132 to be thoroughly documented. ADC Form 70501132 and photocopies of the report containing the information provided by the confidential informant must be attached to the RCSS when the RCSS is forwarded to the Central Classification Office.

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b. INITIAL CLASSIFICATION REVIEWS

Initial Classification reviews are conducted by a Classification Committee composed of two (2) or more members at the Arizona Department of Corrections Reception Centers immediately following the newly committed inmate's diagnostic testing and medical interview/examination.

(1) An initial classification update review is conducted by an institutional classification officer within ten (10) workdays of the date which fall 60 days after the inmate's initial classification. If no change is required only an informal review at which the inmate will not appear shall be held. The review shall be recorded on an Inmate Status Change, ADC Form 40000009, and on the AIMS DI49 Screen.

(2) If changes must be made in the inmate's classification status at this 60-Day Review, the inmate shall be notified by an Institution Classification Referral Notice, ADC Form 70501114, and a hearing shall be held to determine the recommendations for the inmate's changed status.

(3) Initial classification hearings are also held any time the inmate has been convicted of a new offense (i.e. newly adjudicated charges). The detailed guidelines in Section D7 which describe circumstances under which an inmate must be provided with a new initial classification hearing at the 60-Day Review also apply to circumstances where the inmate has been adjudicated and convicted of new charges after incarceration has begun. To allow the inmate the opportunity to exercise the right to make a statement concerning the ICC's recommendations, an RCSS form shall always be completed whenever the inmate's circumstances have required documentation of the case with an ICSS form.

c. REGULAR 180 DAY REVIEWS

Guidance for regular six-month (180-day) reviews appears in ADC Numbered Internal Management Policy. Guidelines for processing RCSS forms are set forth in Section E6 of this manual. In brief 180-day Reviews shall be held within ten (10) workdays of the review date listed on the DI49 Screen in the inmate's AIMS computer file. Unless justification exists for an override, new circumstances have occurred which would increase the inmate's Public Risk or Institutional Risk scores, or the inmate has successfully appealed a disciplinary violation which previously had impact on scores, the inmate's case shall not be heard outside of the time frame established by the review date listed in AIMS. Additional time frame guidelines, for regular reduction of Public Risk scores, also appear in Section E3a(2)(Page 38) of this manual. A statement that the hearing is a "180-Day Classification Review" will be included on the inmates Institutional Classification Referral Notice, ADC Form 70501132.

d. ADMINISTRATIVE REVIEWS

Administrative reviews include those classification reviews which are directed by the Institutional Warden, Deputy Warden or Administrator for the purpose of examining an inmate's current classification status to determine whether the Public Risk Score, Institutional Risk Score and/or the inmate's current institutional placement should be recommended for change. Hearings conducted for the purpose of adjusting P/I score following conviction of a major disciplinary violation as well as hearings conducted to restore scores to a previous level if the inmate successfully appeals a major disciplinary violation are administrative hearings. A hearing conducted to review an inmate's case, for gang related activity, or to determine if an override to reduce or elevate P/I scores, is an administrative classification review hearing at any time a case is heard outside the time frames of the regulated 180-Day Review cycle. The fact that an "Administrative Classification Review" is to be heard shall be noted on the inmate's Institutional Classification Referral Notice."

e. PROTECTIVE SEGREGATION HEARINGS

(1) Investigation and Evaluation: Placement of inmates in Protective Segregation Status is regulated by ADC Numbered Internal Management Policy. In brief, the need for protective segregation status to safeguard inmates any time safety or life is jeopardized must be investigated and evaluated based on all available facts. When sufficient evidence to establish the threat cannot be gathered from the inmate involved, and is not already documented from other sources, investigative assistance must be requested from Investigations and Inspections (I&I) Staff. Policy requires that when a request is made to I&I for investigation, the investigation shall be completed and a written report shall be submitted to the Protective Segregation Committee (PSC) within ten (10) workdays of the request.

(2) Documentation of Protective Segregation Cases: All documentation considered by the Protective Segregation Committee or used by the Warden, Deputy Warden or Administrator to make recommendations and the final decision to place or not place an inmate in protective segregation shall be forwarded for review by the Central Classification Office. All Protective Segregation Committee actions must be documented with a Protective Segregation Waiver/Placement, ADC Form 40000059, regardless of the outcome of the hearing and the decision by the Warden, Deputy Warden or Administrator. A Protective Segregation Waiver/Placement, ADC Form 40000059 must be included when the RCSS is forwarded to Central Classification in all cases where protective segregation has been denied, or whenever an alternative placement to protective segregation is approved by the Warden, Deputy Warden or Administrator.

(3) Transmittal of PS Actions Taken: All Protective Segregation classification actions shall be submitted to the Central Classification Office on a separate Classification Change Sheet, ADC Form 41003001. Several Protective Segregation Committee actions may be submitted on the same Change Sheet, however, protective segregation actions shall never be mixed with other classification actions on any change sheet, nor shall other classification actions be listed on a Classification Change Sheet which includes Protective Segregation actions. Any placement which is considered as an alternative to PS is always to be considered as a protective segregation action.

(4) AIMS Documentation of Protective Segregation Cases: Protective Segregation actions shall always be annotated on the inmate's AIMS DT06 Screen. Of particular importance is the necessity to always include the last names and ADC numbers of any inmates involved in a situation or circumstance which has placed the inmate being classified in jeopardy. Likewise, the last name and ADC number of the inmate, who has had a protective segregation hearing, must also be placed on the AIMS DT08 Screens of each inmate involved in the jeopardizing situation to insure against accidental future placement in the same unit.

f. PAROLE ELIGIBILITY CLASSIFICATION HEARINGS

(1) Parole Eligibility Classification (PEC) Hearings: All classification review hearings are always Parole Eligibility Classification Hearings. The inmate's parole classification status must be recorded on all RCSS forms submitted on each inmate regardless of the type of classification review action being performed. This is especially the case during any routine 180-Day Classification Review. Arizona law requires that each inmate's Parole Eligibility Classification be reviewed every six months. Parole Eligibility Classification (PEC) may be changed in certain cases by classification review actions as indicated in the System Description which follows.

(2) Parole Eligibility Class (PEC) System Description: The Parole Eligibility Classification (PEC) System and actions which may impact upon an inmate's PEC is regulated by the Arizona Revised Statutes (ARS) and various ADC Numbered Internal Management Policy (IMP) issues and the Numbered Director's Management Order (DMO) publications. In each description given below the AIMS Code number used to identify the inmate's PEC within the computer file is listed beside the Roman Numeral in [ ] for the PEC. This AIMS Code number should be used on all classification documentation such as the RCSS, ADC Form 70501131, and on the Inmate Status Change chrono, ADC Form 40000009 instead of the Roman Numeral.

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(a) PEC I [1]: Inmates in PEC 1 are adhering to departmental policy, procedure, rules and regulations and are receiving satisfactory performance evaluations. Inmates in this PEC are eligible for, and are earning release credits. Inmates placed in PEC 1 committed their offense on or after noon, October 1, 1978.

(b) PEC II [2]: All inmates are initially placed in PEC 2 upon commitment to the Arizona Department of Corrections. Within 20 days of the sentencing date each inmate's PEC is reviewed. Inmates who are eligible as specified by statute are recommended for placement in PEC 1, continuation in PEC 2, or placement in another PEC. PEC 2 inmates are parole eligible, but do not earn release credits. PEC 2 applies to inmates who committed their offense on or after noon, October 1, 1978.

(c) PEC III [3]: Placement of inmates in PEC 3 takes precedence over and interrupts the status in all other PECs. The Institutional Disciplinary Committee (IDC) may place inmates in PEC 3 in accordance with the ADC Rules of Discipline. The IDC may place an inmate into PEC 3 for 30, 60 or 90 days as specified under the ADC Rules of Discipline. When this placement period has expired the inmate is automatically returned to the former PEC. Inmates in PEC 3 are not eligible for parole and do not earn release credits. For those inmates who committed their offense on or after July 21, 1979, the inmate's parole eligibility date (PED) is extended one (1) day for each day spent in PEC 3. PEC 3 applies to those inmates who committed their offense on or after noon, October 1, 1978.

(d) PEC IV [4]: This PEC was reserved for inmates placed into Administrative Segregation Status and is no longer a currently used parole classification. Inmates cannot be placed into this PEC.

(e) PEC V [5]: Inmates are placed in PEC 5 only when they have been identified as dangerous psychiatric offenders by a special Classification Committee appointed by the Department Director. This special Classification Committee includes a Psychiatrist. All offenders are housed at a mental health facility. Inmates in PEC 5 are not eligible for parole and do not earn release credits. PEC 5 does not extend the inmate's PED. PEC 5 applies to inmates who committed their offense on or after noon, July 21, 1979.

(f) PEC VI [6]: PEC 6 is reserved for inmates sentenced to death. Inmates in PEC 6 are not eligible for parole and do not earn release credits. PEC 6 applies to inmates who committed their offense on or after noon, October 1, 1978.

(g) PEC VII [7] Inmates within PEC 7 are adhering to departmental rules and regulations, receiving satisfactory performance evaluations, and are not by statute, eligible for parole because of the nature of their committing offense(s). Applicable sentencing statutes prohibit the inmate from earning release credits. Only re-sentencing by the court of jurisdiction may result in the inmate becoming eligible to earn release credits, which will upon applicable re-sentencing be calculated retroactively based on time served in PEC 7. PEC 7 applies to inmates who committed their offense on or after noon, October 1, 1978.

(h) PEC VIII [8] Inmates placed within PEC 8 have earned a position of confidence and trust. Inmates within PEC 8 earn double time credits (i.e., two-for-one credits) in accordance with ARS Title 31 § 31-352. Inmates within PEC 8 are eligible for parole when they have served their mandatory time in accordance with ARS Title 31 § 31-411.

(i) PEC IX [9] Inmates placed into PEC 9 are not considered to be in a position of confidence and trust. Inmates within PEC 9 do not earn double (two-for-one) time credits. PEC 9 inmates are parole eligible when they have served the mandatory time period as specified by ARS Title 31 § 31-411.

(3) PEC Hearings: Inmates must be notified of a PEC hearing using the Institutional Classification Referral Notice, ADC Form 70501114, in the same manner as any other classification hearing. If recommendations will not be made to change the inmate's PEC the hearing differs in no particulars at all from any other classification hearing. At the publication of this manual there is only one PEC to which an ICC may recommend placement, other than to correct an erroneous placement or start the inmate in PEC 1 at Initial Classification, and that is PEC 2. Inmates may be recommended for return to PEC 2 based on the inmate's accumulation of unsatisfactory performance evaluations for the inmate's primary work/training/education or treatment assignments.

(4) Documentation: When placement into PEC 2 is recommended, based on supporting documentation described below, an Inmate Status Change chrono, ADC Form 40000009, must be filled-out but not signed. The unsigned ADC Form 40000009 shall be submitted with a fully completed RCSS explaining the inmate's case and justifying PEC 2 placement.

(5) Justification for PEC 2 Placements: The PEC 2 option is available to deal with the inmate who goes to work, but fails to complete assignments in an allocated reasonable period of time, does substandard work, or who consistently fails to adhere to necessary on-the-job rules and regulations, thus earning less than average performance evaluations (i.e., less than satisfactory 3-3-3=9, poor or unacceptable ratings on the evaluation form). Work supervisors, program coordinators, teachers, and treatment staff who are completing an unsatisfactory Work/Training/Education/Treatment Evaluation, ADC Form 40000020, shall write this warning on the blank lines of the "COMMENTS" section, "Two or more, less than satisfactory evaluations, can cause you to be returned to Parole Class II." The inmate must sign the evaluation form, or another staff member in addition to the rater, must sign as a witness of the inmate's refusal to sign the form. Having established the necessary foundation for returning the inmate to PEC 2, other actions which may correct the inmate's performance, if documented, will enhance the case for return to PEC 2, if the inmate should receive another unsatisfactory evaluation.

(a) The ICC may under existing ADC Numbered Internal Management Policy hear the inmate's case to remove the inmate from his current job, place the inmate into another job, or change the inmate's rate of pay. When such actions are taken, or when the inmate is counseled and/or warned that continued poor performance may result in a recommendation for return of the inmate to PEC 2, the Inmate Status Change chrono, ADC Form 40000009, with the Institution Classification Referral Notice and an RCSS may be used to process the change in Parole Class.

(b) If it is considered necessary to recommend the inmate's return to PEC 2, at least two Work/Training/Education/Treatment Evaluations, bearing the warning cited above must be submitted with the Institutional Classification Committee's report on the RCSS. The critical issues involve the documentation of the poor performance and the fact that inmates are given a reasonable period of time in which to correct their performance, normally the 30 day period between the first poor evaluation and the next monthly evaluation that is due. If other actions were taken by staff or the ICC and can be documented, these documents further enhance the grounds for the recommendation.

(d) There is an additional classification option to placement of inmates into PEC 2 which can be taken based on poor performance evaluations. Adjustments can be made in the inmate's Institutional Risk (I) Score, if conditions specified in Section E3b(2)(c)(Page 41) of this manual are met.

c. SCORING SUSPENSIONS - ARTC B-WARD/FLAMENCO

During the course of mental health treatment inmates assigned to the psychiatric hospital unit at ARTC B-Ward and the Flamenco Mental Health Treatment Center shall not be eligible for Public Risk (P) Score or Institutional Risk (I) Score reductions.

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(1) Suspension of Regular Scoring Procedure: Recommendations for reductions of Public Risk (P) Scores or Institutional Risk (I) Scores shall not be made until inmates have been stabilized and are considered eligible, based on their status of treatment, for reassignment to non-treatment facilities.

(a) Regular Reviews: The inmate shall be provided with regular six-month (180-Day) Classification Reviews as are all other inmates, however, the ICC shall, by request for an override, recommend that the inmate's score remain at the current level. This procedure applies to those inmates who have not yet completed their treatment at the time of the review.

(b) Score Changes Resulting From Disciplinary Action: Public Risk and/or Institutional Risk Score shall be elevated in accordance with the procedures within this manual anytime such increases may be justified by disciplinary and/or any gang related activities which can be supported with appropriate documentation.

(2) Location Change/Transfer Review: When inmates complete their course of treatment and are considered ready for discharge by the supervising psychiatrist the ICC may recommend Public Risk (P) Score and Institutional Risk (I) Score adjustments consistent with the inmate's individual case and the need for assignment to a facility where medications and/or follow-up care may be available. Consistent with Initial Classification criteria and the need for somewhat more structure and custody supervision, inmates who have previously undergone mental health treatment shall not be assigned an Institutional Risk Score which is lower than their Mental Health Care (MH) Needs Score. When their MH is approved for reduction by a Psychiatrist, based on the documented consultation results recorded on an Institutional Need Consultation Referral, ADC Form 70501129, the inmate's Institutional Risk Score may then be reduced to the lower level

2. ICC STATUS EVALUATION HEARINGS

In addition to conducting Classification Reviews the Institutional Classification Committee (ICC) is also tasked with the responsibility to evaluate the cases of inmates to determine eligibility for participation in certain programs or activities, and/or to make a preliminary determination of whether or not the inmate's case meets criteria which may benefit the inmate in some manner, such as eligibility status for certain departmental inmate release options.

a. INMATE RELEASES

(1) Institutional Endorsement of the CCP: The Institutional Classification Committee has the responsibility of evaluating the case of each "eligible" inmate to determine the current status of the inmate's Correctional Classification Profile (CCP). For practical purposes "eligible" inmate's are readily identified by inspection of their AIMS DI14 Screen, Inmate Record, time computation section which appears in the upper right corner of the DI14 Screens on Page 1. If a Provisional Release Date (PRD) and/or Earned Release Credit Date (ERCD) is listed, the inmate meets the basic "eligibility" requirements and documentation of the inmate's CCP, 150 days prior to the listed release date is required. It must be understood that not all "eligible" inmates will "meet criteria" for an approved release. For inmates who previously did not meet criteria, but are classified into a CCP status that is expected to meet criteria, on a date after the 150-day milestone, an Institutional Release Endorsement must accompany the RCSS to insure initiation of the inmates release eligibility determination. SEE PAGE 55 FOR RELEASE CRITERIA

(2) Release Eligibility: Basic "eligibility" is listed below. Criteria used as the basis for approval of each type of release are listed within ADC Numbered Internal Management Policies.

(a) Provisional Release: Inmates whose cases match the following requirements are "eligible" to be considered for Provisional Releases if their cases "meet criteria" as set forth within ADC Numbered Internal Management Policy.

- Inmates who committed their offense(s) between August 7, 1985 and August 12, 1986, are eligible if they shall have served not less than one calendar year of the imposed sentence and shall be within the range of 180-30 calendar days of completing all sentences imposed.

- Inmates who committed their offense(s) on or after August 13, 1986, are eligible if they shall have served not less than one calendar year of the imposed sentence and shall be within the range of 180-30 calendar days of their Earned Release Credit Date on all sentences imposed.

(b) Earned Release Credit Release: Inmates who committed their offense(s) on or after August 13, 1986 are "eligible" if their case "meets criteria" as set forth in ADC Numbered Internal Management Policy.

(3) PR and ERCR Documentation: The Provisional Release Institutional Endorsement (PRIE) and the Earned Release Credit Institutional Endorsement (ERCIE) have been combined into a single dual purpose form, the Institutional Release Endorsement (IRE), ADC Form 70501069 (Revised 9/90), which must be ordered as a multi-copy NCR type, printed blank form. Photocopies of this form are prohibited, except on an emergency basis while awaiting delivery of printing back orders. The inmate's CCP is reviewed and recorded by the Classification Officer and signed by the inmate (or witnessed by a staff member if the inmate refuses to sign). The inmate is heard by the ICC. The ICC confirms the inmate's CCP and endorses the IRE. The Warden, Deputy Warden or Administrator reviews the accuracy of the CCP and endorses the IRE.

(4) IRE Transmittal: All parts (copies) of the IRE must be transmitted to the Central Classification Office using a Classification Change Sheet, ADC Form 41003001. The inmate's copy shall be returned upon final determination of the case. If an inmate is seen by the ICC for a Classification Review (i.e. Administrative Review, 180-Day Review, PS Review, other, etc.) at the same time that the inmate's IRE is due, the IRE action will be listed on the same Classification Change Sheet and as the next entry immediately underneath the inmate's classification review action. For inmates who are seen by the ICC for no other reason except the completion of the Institutional Release Endorsement, a completely separate change sheet shall be used for this purpose. Up to 15 IRE entries may be listed on one (1) change sheet, but classification reviews and IRE hearings shall be listed on separate change sheets except as already noted.

(5) Processing and Final Determination: The Central Classification Office shall review and verify the accuracy of the inmate's CCP and forward the IRE to the Time Computation Office where the final determination shall be made under the general supervision of the Administrator, Bureau of Offender Services. Final determinations, because objective criteria are involved, are not subject to appeal.

(6) Release Eligibility Rescissions: The bottom of the IRE includes a section for the rescission of release eligibility based on changes in the inmate's CCP status. When an inmate is heard by the Institutional Classification Committee and actions are taken which change an inmate's release eligibility status, a new IRE must be prepared and must accompany the RCSS recommending changes to the inmate's CCP which will result in termination of the inmate's release eligibility.

(a) The Classification Officer shall complete the form and the inmate shall be required to sign the form. The form shall then be forwarded to the ICC.

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(b) The ICC shall hear the case to include both the rescission of release as well as the classification review changes. The ICC shall endorse the form. The RCSS and the IRE shall, then be forwarded to the Warden, Deputy Warden or Administrator.

(c) The Warden, Deputy Warden or Administrator shall endorse the IRE rescission based on the ICC input and record the reason for the rescission. The Warden, Deputy Warden or Administrator need only sign the bottom, rescission section of the form. The IRE is then forwarded to the Central Classification Office for approval of the classification review action.

(d) Upon approval of the classification action the Classification Office shall then pass the IRE to the Administrator, Bureau of Offender Services for final approval/denial of the Release Rescission.

b. LEVELS OF SUPERVISION

Inmates who meet specific criteria may be authorized to participate in activities which require the inmate to participate outside of the institutional setting. The criteria for participation is established by ADC Numbered Internal Management Policy in four separate "Levels of Supervision," based on the degree of supervision required for inmates at different security and custody levels: Level A - requires escort by uniformed, armed staff; Level B - requires escort by unarmed staff; Level C - requires escort by unarmed staff, or by a representative of the company/government agency with which the inmate will be associated; Level D - does not require escort.

(1) General Guidelines: Institutional Classification Committees are responsible, under certain circumstances for the review and evaluation of the required level of supervision in the cases of inmates who may participate in off-institution activities.

(a) Voluntary Application: When activities are available for which inmates may wish to request that participation be authorized, inmates shall submit an Inmate Letter, ADC Form 70501168A (one form only, two or more pages are not authorized, attachments or enclosures are not authorized), to their assigned Correctional Program Officer (CPO) applying for authorization to participate. The CPO shall review cases, and forward the applications to the ICC for evaluation. The ICC shall forward its recommendations regarding any inmate's application to the Correctional Program Supervisor who with any added recommendations shall forward applications to the Warden, Deputy Warden or Administrator concerned for approval or denial.

(b) Designated Work Programs: In cases where the Institutional Unit has outside work details or special crew work projects, contracts with government agencies, etc., the Warden, Deputy Warden or Administrator responsible for providing the work crew may assign inmates to such crews. The Warden, Deputy Warden or Administrator shall establish the manner in which inmates shall be evaluated and documented to insure that each participant meets the level of supervision criteria, or that written exceptions are documented upon approval of all exceptions by the Assistant Director of Adult Institutions.

(2) Statewide Driver Program: The ADC Statewide Driver Program is currently regulated by Director's Management Order. Inmates may apply for Statewide Driver status by submitting their application to their assigned CPO.

(a) If the inmate meets criteria, the application shall be forwarded to the ICC. The ICC shall review the application and make recommendations to the Warden, Deputy Warden or Administrator who shall approve or deny the application. If the application is approved the CPS

shall be notified of the new drivers status. The CPS shall then report the following information by AIMS DA23 Memo Router to the Central Classification Office:

- Inmate's last name, first name, middle initial,
- ADC number,
- Current P/I Scores,
- Date assigned to drivers status,
- and whether the driver is currently on ACTIVE or INACTIVE status.

(b) Inactive Status drivers are fully qualified drivers who may be ACTIVATED at any time. Should a driver commit a disciplinary violation or be placed under investigation, the driver shall be removed from driver status. Drivers in such a situation shall not be placed on the INACTIVE listing.

(c) Anytime the status of a driver changes, the Central Classification Office shall be notified by Memo Router. Every month not later than the 10th day of each month all Institutional Units utilizing Statewide Drivers shall report the information shown at Section F2b(2)(a) above, by Memo Router to the Central Classification Office on every approved driver in both ACTIVE and INACTIVE status. Included within this report shall also be a listing of any drivers removed from Statewide Drive Status during the last reporting period.

c. COMPASSIONATE LEAVE

Compassionate leave is defined in Section B. Definitions within this manual. Definitions of critical concepts such as "immediate family," categories of compassionate leave and "emergency compassionate leave" are defined in ADC Numbered Internal Management Policy. Applications for compassionate leave are submitted by inmates on ADC Form 70501002 to their assigned CPO.

(1) The CPO shall investigate the circumstances surrounding the inmate's claims within the application and forward the results of evaluation and investigation to the ICC. The ICC shall review the application and interview the inmate, then forward the application to the Warden, Deputy Warden or Administrator concerned.

(2) The Deputy Warden (Warden's Designee when the Institutional Unit has no Deputy Warden) shall obtain a psychological evaluation prior to recommending approval or denial to the Warden whenever applications include claims involving conditions of emotional instability or distress.

(3) The Warden shall approve or deny the application for compassionate leave. Approved applications shall be forwarded to Central Classification Office for final review.

3. INTERSTATE CORRECTIONS COMPACT (ICC) INMATES

a. IDENTIFICATION AND INITIAL CLASSIFICATION

(1) Identification: Interstate Corrections Compact (ICC) inmates are individuals serving a sentence imposed by the court of jurisdiction in another state who have been transferred to the Arizona Department of Corrections, under the Interstate Corrections Compact Agreements, to serve the remainder of their sentence. These inmates are assigned ADC numbers which include the "X" character as an added character following their six-digit ADC number. Compared with the normal six-digit ADC number format, an ICC inmate number appears as follows: (012345X). This special ADC Number Format is also used within the AIMS computer files enabling easy identification of these inmates. The "X" character shall always be recorded on all documents completed for such inmate's, especially all classification documents.

(2) Initial Classification: Interstate Corrections Compact inmates must be classified using the same criteria as used for all Arizona inmates. This often requires very careful evaluation of the inmate's case prior to the initial classification hearing. The inmate's initial classification date shall always be retroactive to the date that the sending state's Department of Corrections assumed custody of the inmate from the sending state's court of jurisdiction. The classification conversion process, using ADC Form 70501128 as described in Appendix C of this operating manual, shall be applied to determine the inmate's correct Public Risk (P) and Institutional Risk (I) scores at initial classification. Whenever insufficient documentation is available to properly complete the inmate's initial classification, the Offender Services Bureau Special Services Office shall be contacted and requested to obtain the information from the sending state. Direct contact with sending state authorities is not authorized. Interstate Corrections Compact initial classification cases shall be, forwarded to Central Classification, listed on a separate Classification Change Sheet from all other inmate cases.

b. PROGRESS REPORTS AND RECLASSIFICATION

(1) Progress Reports: A progress report must be prepared for all Interstate Corrections Compact inmates every six months while they remain incarcerated in Arizona.

(a) Progress Report Formats: The format for the report is much like Arizona's parole progress reports, but must be prepared on a special blank form. These forms are available through the Offender Services Bureau Special Services Office.

(b) Progress Report Cycle: The first report is due six months after the date that the Arizona Department of Corrections assumed custody of the inmate. Progress reports are prepared at the end of each six-month period unless requested earlier by the sending state. Whenever a progress report is prepared, the inmate's AIMS DT08 Screen shall be annotated prior to forwarding the report, to show the date the progress report was prepared and the name of the sending state. Progress reports shall be forwarded to the Offender Services Bureau Special Services Office, except when the report must accompany a classification action, in accordance with ADC Numbered Internal Management Policy, that if approved, may result in the eventual transfer of the inmate to a lower security/custody facility.

(2) Reclassification of Interstate Corrections Comoact Inmate's: All Interstate Corrections Compact inmates shall be reclassified using the same criteria as Arizona inmate's, except that the following procedures shall be applied to every reclassification action.

(a) Classification Processing: RCSS forms shall be forwarded to Central Classification on separate Classification Change Sheets from all other inmates. The inmate's AIMS DT08 Screen shall be annotated in the same manner as required for all other classification actions. If the reclassification recommendations include transfer of the inmate to an institution at a lesser security or custody level, a copy of the last progress report must be included as a supporting document with the RCSS. If the last progress report is four (4) or more months old, a new progress report must be prepared to accompany the RCSS.

(b) Classification Approvals: When Interstate Corrections Compact actions recommending lower security/custody assignments are approved at Central Classification, the inmate shall be placed in a "transfer hold status," and the inmate's AIMS DT08 Screen annotated accordingly, until such time as agreement with the approved classification action can be obtained from the inmate's sending state by the Offender Services Bureau Special Services Office. When agreement is received in writing from the sending state, the inmate's shall then be processed for transfer to the new institutional assignment.

c. INTERSTATE CORRECTIONS COMPACT LIAISON

The Offender Services Bureau Special Services Office is tasked with performing all liaison functions which may be required for communicating with the Interstate Corrections Compact inmate's sending state. Whenever problems arise, questions must be answered, or documentation is needed assistance must be sought from the Special Services Office. This Office is tasked with the job of providing all such assistance. Inquiries made directly to sending state authorities are not authorized. Additional information may be found within ADC Numbered Internal Management Policy under the subject of "Transfer of Inmate's Pursuant to Interstate Corrections Compact (ICC)."

4. APPEALS

Appeals of all types shall be submitted as one page and only one page Inmate Letters, ADC Form 70501168A. Enclosures or attachments are not authorized. Appeals shall be sent through departmental mail channels. Appeals received through the U. S. Mail or from third parties outside channels shall be returned to the sender without action. Staff receiving appeals which do not conform to the Policy on Inmate Letters shall return the appeal to the inmate for resubmission within three (3) workdays in the required form. The resubmitted appeal should carry the same date as the first improper submission to avoid time frame problems. The table which appears on the following page represents the usual channels for the processing of most appeals of the various kinds. Some local institutional organizational differences may cause this chart to be inaccurate in certain cases. Inmates should be given correct information concerning the channels through which they must appeal a specific action or denial when they decide an appeal is necessary in their own case.

Type of Action to Be Appealed	Appeal Authority
Institutional Classification Action	Administrator, Offender Services Bureau
Parole Eligibility Classification Action	Administrator, Offender Services Bureau
Protective Segregation Action	Warden or Designee at facility complex level
Levels of Supervision Determination Action	Warden, Deputy Warden or Administrator for non-work activities. Work activities decisions may not be appealed.
Statewide Driver Application Denial	No Appeal of the Warden, Deputy Warden or Administrator's denial.
Compassionate Leave Application Denial	Applications denied based on psychological grounds may be appealed to the Warden. Denials based on other grounds may be appealed to the Administrator, Offender Services Bureau. Denials by the Assistant Director, Adult Institutions, based on results of Community Services Division investigations may be appealed to the Director.
Institutional Release Endorsements (PR/ERCR)	Administrator, Offender Services Bureau

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NOTES

INSTITUTIONAL ASSIGNMENT CHART - MEN

This Institutional Assignment Chart is to be used by Department staff as a guideline in matching institutional capabilities to an inmate's Public and Institutional Risk Score. An Inmate may be housed, temporarily or permanently, in any facility which has capabilities exceeding the inmate's Public and/or Institutional Risk Scores.

P/I		INSTITUTIONAL RISK (I) SCORE				
		5	4	3	2	1
PUBLIC RISK (P) SCORE	5	F-SMU	F-SMU F-CU F-CU	F-CENTRAL	F-CENTRAL	F-CENTRAL
	4	F-SMU	F-SMU F-CU T-CIM W-KAI SOUTH	F-CENTRAL T-CIMARRON W-KAIBAB NORTH W-KAIBAB SOUTH	D-MOHAVE F-RYNNING T-CIMARRON T-RINCON W-KAIBAB NORTH W-KAIBAB SOUTH	D-MOHAVE F-RYNNING T-CIMARRON T-RINCON W-KAIBAB NORTH W-KAIBAB SOUTH
	3	F-SMU	F-SMU F-CU F-RYN PV-SJ 1,2 PV-SC 1,2 T-SR W-KAI NORTH	D-MOHAVE F-RYNNING F-SOUTH PV-SAN JUAN 1,2 PV-SANTA CRUZ 1,2 T-SANTA RITA	D-MOHAVE F-RYNNING F-SOUTH PV-SAN JUAN 1,2 PV-SANTA CRUZ 1,2 T-SANTA RITA	D-MOHAVE F-EAST F-RYNNING F-SOUTH [redacted] PV-SAN PEDRO 1,2 PV-SAN JUAN 1,2 PV-SANTA CRUZ 1,2 T-SANTA RITA
	2	F-SMU	F-SMU F-CU F-RYN PV-SJ 1,2 PV-SC 1,2 T-SR	D-GILA 2,4 D-MARICOPA 2 F-EAST F-NORTH FT GRANT 3,4,5 PHX-GLOBE PV-SAN PEDRO 1,2 T-ECHO	D-GILA 2,4 D-MARICOPA 2 F-EAST F-NORTH FT GRANT 3,4,5 PHX-GLOBE PV-SAN PEDRO 1,2 T-ECHO	D-GILA 2,4 F-EAST F-PICACHO 3 PHX-GLOBE PV-SAN PEDRO 1,2 SAFFORD 3,4,5,6 W-CORONADO YUMA
	1	F-SMU	F-SMU F-CU F-RYN PV-SJ 1,2 PV-SC 1,2 T-SR	D-GILA 2,4 F-EAST PHX-GLOBE PV-SAN PEDRO 1,2	F-EAST F-PICACHO 3 PHX-GLOBE PV-SAN PEDRO 1,2 SAFFORD 3,4,5,6 W-CORONADO YUMA	F-EAST F-PICACHO 3 PHX-GLOBE PV-SAN PEDRO 1,2 SAFFORD 3,4,5,6 W-CORONADO YUMA

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ASSIGNMENT EXCLUSIONS: Inmates convicted of any of the offenses as listed below, are excluded from assignment to any institution listed above with a matching number.

1. First Degree Murder
2. Serious Sex Offense[24]
3. Sex Offense - Any Type
4. Arson
5. Kidnapping
6. Graham Co. Commitment

D = ASPC-DOUGLAS F = ASPC-FLORENCE PV = ASPC-PERRYVILLE T = ASPC-TUCSON W = ASPC-WINSLOW

[24] "Serious Offenses" are listed in ARS Title 13 § 13-604(O).

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INSTITUTIONAL ASSIGNMENT CHART - WOMEN

This Institutional Assignment Chart is to be used by Department staff as a guideline in matching institutional capabilities to an inmate's Public and Institutional Risk Score. An inmate may be housed, temporarily or permanently, in any facility which has capabilities exceeding the inmate's Public and/or Institutional Risk Scores.

P/I	INSTITUTIONAL RISK (I) SCORE				
	5	4	3	2	1
PUBLIC RISK (P) SCORE 5	SANTA MARIA	SANTA MARIA	SANTA MARIA	SANTA MARIA	SANTA MARIA
PUBLIC RISK (P) SCORE 4	SANTA MARIA	SANTA MARIA	SANTA MARIA	SANTA MARIA	SANTA MARIA NORTH UNIT
PUBLIC RISK (P) SCORE 3	SANTA MARIA	SANTA MARIA	NORTH UNIT	NORTH UNIT	NORTH UNIT
PUBLIC RISK (P) SCORE 2	SANTA MARIA	NORTH UNIT	ACW	ACW	ACW
PUBLIC RISK (P) SCORE 1	SANTA MARIA	NORTH UNIT	ACW	ACW	ACW

The chart can assist in calculating the shortest possible time frames for reduction of custody from any given combination of Public Risk and Institutional Risk scores to any lower levels of custody.

NOTE:

These calculations are based on the assumption of a discipline free institutional experience. Disciplinary action would lengthen the time frames.

INSTRUCTIONS:

All possible combinations of Public Risk and Institutional Risk are shown in the left hand column, and are represented as P-I. The top row shows time in years listed in half-year increments to match the semi-annual classification reviews.

The shortest possible time for classification reduction in any individual instance can be determined by finding the offender's current P-I scores in the left hand column and following that row over to the right.

P-I	YEARS							
	.5	1.0	1.5	2.0	2.5	3.0	3.5	4.0
5-5	5-4	5-3	5-2	4-1	4-1	4-1	4-1	3-1*
5-4	5-3	5-2	5-1	4-1	4-1	4-1	4-1	3-1*
5-3	5-2	5-1	5-1	4-1	4-1	4-1	4-1	3-1*
5-2	5-1	5-1	5-1	4-1	4-1	4-1	4-1	3-1*
5-1	5-1	5-1	5-1	4-1	4-1	4-1	4-1	3-1*
4-5	4-4	4-3	4-2	3-1	3-1	2-1*		
4-4	4-3	4-2	4-1	3-1	3-1	2-1*		
4-3	4-2	4-2	4-1	3-1	3-1	2-1*		
4-2	4-1	4-1	4-1	3-1	3-1	2-1*		
4-1	4-1	4-1	4-1	3-1	3-1	2-1*		
3-5	3-4	3-3	2-2	2-1	1-1			
3-4	3-3	2-2	2-1	1-1				
3-3	3-2	2-1	2-1	1-1				
3-2	3-1	2-1	2-1	1-1				
3-1	3-1	2-1	2-1	1-1				
2-5	2-4	2-3	1-2	1-1				
2-4	2-3	1-2	1-1					
2-3	2-2	1-1						
2-2	2-1	1-1						
2-1	2-1	1-1						

*LOWEST POSSIBLE SCORE

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INSTITUTIONAL MEDICAL AND HEALTH CARE CAPABILITIES MATRIX

PAGE 1 OF 8 PAGES	INSTITUTIONAL FACILITIES AND UNITS		
MEDICAL AND HEALTH CARE CAPABILITIES	TYPE OF CARE	ASPC-Douglas All Unit Except DWI	ASPC-Douglas DWI Papago Unit	ASPC-Florence Central Unit
	COMMENTS	This facility is unable to care for chronic unstable conditions such as, AIDS, brittle diabetics, inmates requiring intensive nursing care, Cancer with recurrent chemotherapy, or those inmates who require specialty clinic follow-ups. They also can not care for seriously acutely ill inmates or those who are chronically mentally ill. They are able to follow up on Ortho consults, but all other specialty clinics are in Tucson, which is 117 miles away. They are able to care for stable diabetes, stable seizure disorders, and stable hypertensives. ETA ER: 20 min; AIR EVAC ETA ER: 60 min (St. Mary's - Tucson).	This facility is unable to care for chronic conditions such as, AIDS, brittle diabetics, Cancer with recurrent chemotherapy, inmates requiring intensive nursing care, or those who require specialty follow-up consultations. They can care for diabetics, hypertensives, and seizure disorders if they are stable. They can follow-up on Ortho consults but all other clinics are in Tucson which is 117 miles away. They can not care for seriously acute and chronically mentally ill inmates. ETA ER: 20 min; AIR EVAC ER: 60 min (St. Mary's - Tucson).	This unit is able to care for most conditions requiring out-patient or limited infirmary services. Central Unit is the only unit in Florence where a seriously ill inmate will be housed. It is a maximum security unit but all custody levels will be housed here if seriously ill. Housing Unit #8 has a capacity of 12 beds. Inmates housed here have chronic long term illnesses or disabilities. Admission is coordinated with the FHA and the medical provider staff at ASPC-F. ETA ER: 15 min; AIR EVAC ER: 40 min (MMC-Phoenix).
	FNP MD/PA	FULL TIME	ON SITE 2 DAYS PER WEEK	YES MONDAY THRU FRIDAY
	DENTAL	ON SITE	AVAILABLE THRU COMPLEX HALF DAY PER WEEK	YES
	PHARMACY	ON SITE	AVAILABLE THRU COMPLEX	YES MONDAY THRU FRIDAY
	X-RAY	ON SITE	NO	YES MONDAY THRU FRIDAY
	UNIT DOSE	YES	NO	YES
	PSYCH SERVICES	CONTRACT: 10 HOURS PER MONTH	CONTRACT: 10 HOURS PER MONTH	YES MONDAY THRU FRIDAY
	NURSE ON SITE	FULL TIME	8 HOURS PER DAY	24 HOURS/DAY 7 DAYS/WEEK
	WHEELCHAIR HANDICAPPED	NO	NO	YES HOUSING UNIT #8 ONLY
	FULL DUTY STATUS ONLY	NO	NO	NO
	ANY DUTY STATUS	YES	YES	YES

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INSTITUTIONAL MEDICAL AND HEALTH CARE CAPABILITIES MATRIX				
PAGE 2 OF 8 PAGES		INSTITUTIONAL FACILITIES AND UNITS		
MEDICAL AND HEALTH CARE CAPABILITIES	TYPE OF CARE	ASPC-Florence Cell Block 6 (CB6)	ASPC-Florence East Unit (EU)	ASPC-Florence North Unit (NU)
	COMMENTS	Brittle diabetics and inmates on IV therapy are not appropriate for this unit. ETA ER: 15 min; AIR EVAC ER: 40 min (MMC - Phoenix).	Chronic, unstable conditions, such as Insulin Dependent Diabetics, those on IV therapy or any services requiring more than a Monday through Friday 0800-1600 time frame are not appropriate for assignment to this unit. ETA ER: 15 min; AIR EVAC ETA ER: 40 min (MMC - Phoenix).	Chronic, unstable conditions are not appropriate for assignment to this unit. Medical records are maintained in the ASPC-F-CU Health Unit. ETA ER: 15 min; AIR EVAC ETA ER: 40 min (MMC - Phoenix).
	FNP MD/PA	20 HRS/WEEK EMERGENCY CARE AT ASPC-F-CU	MON THRU FRI 0800-1600 EMERGENCY CARE AT ASPC-F-CU	AVAILABLE THRU ASPC-F-CU
	DENTAL	ON SITE	ON SITE 15-30 HRS/WEEK	AVAILABLE THRU ASPC-F-CU
	PHARMACY	AVAILABLE THRU ASPC-F-CU	AVAILABLE THRU ASPC-F-CU	AVAILABLE THRU ASPC-F-CU
	X-RAY	AVAILABLE THRU ASPC-F-CU	AVAILABLE THRU ASPC-F-CU	AVAILABLE THRU ASPC-F-CU
	UNIT DOSE	YES	NO: MEDICATION DELIVERY 2 TIMES/DAY ONLY	NO
	PSYCH SERVICES	ON SITE 20 HRS/WEEK COMPLEX-WIDE SVCS AVAILABLE MON THRU FRI	ON SITE 4 HRS/WEEK AVAILABLE THRU ASPC-F-CU MONDAY THRU FRIDAY	AVAILABLE THRU ASPC-F-CU
	NURSE ON SITE	MON THRU FRI 0700-1500 PM's & WEEKENDS - MEDS ONLY	MON THRU FRI 0800-1600	SICK CALL 4 HRS/WEEK MEDICATIONS ARE PASSED 30 MIN/DAY
	WHEELCHAIR HANDICAPPED	NO HANDICAPPED ASSIGNED ON CASE BY CASE BASIS	YES HANDICAPPED ASSIGNED ON CASE BY CASE BASIS	NO HANDICAPPED ASSIGNED ON CASE BY CASE BASIS
	FULL DUTY STATUS ONLY	NO	NO	NO
	ANY DUTY STATUS	YES	YES	YES

INSTITUTIONAL MEDICAL AND HEALTH CARE CAPABILITIES MATRIX				
PAGE 3 OF 8 PAGES		INSTITUTIONAL FACILITIES AND UNITS		
MEDICAL AND HEALTH CARE CAPABILITIES	TYPE OF CARE	ASPC-Florence Picacho Unit	ASPC-Florence (SMU) Special Management Unit	ASPC-Florence South Unit
	COMMENTS	All medical services for this facility are provided by ASPC-Florence and the inmates must be transported to Florence for care. Inmates with chronic, unstable conditions or those who require daily care or unit dose are not appropriate for assignment to Picacho. Medical records are maintained in the Central Unit Health Unit. ETA ER: 30 min; AIR EVAC ETA ER: 45 min (MMC - Phoenix).	Inmates with conditions which require continuous monitoring are not appropriate for assignment to SMU. Inmates with intermittent (daily, weekly, monthly) monitoring needs are suitable for this unit. ETA ER: 15 min; AIR EVAC ETA ER: 40 min (MMC - Phoenix).	Inmates requiring frequent nursing intervention are not appropriate for assignment to this unit. Medical records are maintained in Central Unit Health Unit. ETA ER: 15 min; AIR EVAC ETA ER: 40 min (MMC - Phoenix).
	FNP MD/PA	AVAILABLE THRU ASPC-F-CU	YES MONDAY THRU FRIDAY	AVAILABLE THRU ASPC-F-CU
	DENTAL	AVAILABLE THRU ASPC-F-CU	YES MONDAY THRU FRIDAY	AVAILABLE THRU ASPC-F-CU
	PHARMACY	AVAILABLE THRU ASPC-F-CU	AVAILABLE THRU ASPC-F-CU	AVAILABLE THRU ASPC-F-CU
	X-RAY	AVAILABLE THRU ASPC-F-CU	YES MONDAY THRU FRIDAY	AVAILABLE THRU ASPC-F-CU
	UNIT DOSE	NO	YES	NO
	PSYCH SERVICES	AVAILABLE THRU ASPC-F-CU	YES MONDAY THRU FRIDAY	AVAILABLE THRU ASPC-F-CU
	NURSE ON SITE	6-8 HOURS/WEEK 5 DAYS/WEEK	24 HOURS/DAY 7 DAYS/WEEK	ON SITE ONCE EACH DAY TO PASS MEDICATION SICK CALL 2 TIMES/WEEK
	WHEELCHAIR HANDICAPPED	NO	NO HANDICAPPED ASSIGNED ON CASE BY CASE BASIS	NO HANDICAPPED ASSIGNED ON CASE BY CASE BASIS TOTAL SELF-CARE ONLY
	FULL DUTY STATUS ONLY	NO	NO	NO
	ANY DUTY STATUS	YES	YES	YES

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INSTITUTIONAL MEDICAL AND HEALTH CARE CAPABILITIES MATRIX				
PAGE 4 OF 8 PAGES		INSTITUTIONAL FACILITIES AND UNITS		
MEDICAL AND HEALTH CARE CAPABILITIES	TYPE OF CARE	ASPC-Florence (SPU) Special Programs Unit	ASPC-Florence Women's Unit	ASPC-Fort Grant
	COMMENTS	A handicapped inmate who is full self-care and does not require a modified living area could be housed at SPU, but he must meet the mental health criteria. Inmates requiring frequent medical intervention, i.e., IV therapy, breathing treatments, etc., are not appropriate for assignment to SPU. Inmates are evaluated by an admission team prior to a move to SPU. Inmate who can not function in an open dormitory type setting are not appropriate. ETA ER: 15 min; AIR EVAC ETA ER: 40 min (MMC - Phoenix).	Chronic unstable conditions, such as brittle diabetes, should not be sent to ASPC-F-Women's Unit. Also pregnant women up to six weeks postpartum, geriatric women, and those on IV therapy should not be sent to this unit. ETA ER: 15 min; AIR EVAC ETA ER: 40 min (MMC - Phoenix).	This facility can not care for inmates requiring on-going follow-ups at major medical facilities. Conditions affected by high altitudes should not be sent to Fort Grant. Asthmatics and other chronic respiratory conditions are not appropriate. Also inmates with cardiac conditions and lower prostheses are not appropriate. Chronic, unstable psych conditions should not be sent to Fort Grant. ETA ER: 60 min (Limited Svcs Only); AIR EVAC ETA ER: 45 min (Safford).
	FNP MD/PA	6 HOURS/WEEK	30 HOURS/WEEK	FULL TIME
	DENTAL	AVAILABLE THRU ASPC-F-CU	15-20 HOURS/WEEK	ON SITE 3 DAYS/WEEK
	PHARMACY	AVAILABLE THRU ASPC-F-CU	AVAILABLE THRU ASPC-F-CU	ON SITE
	X-RAY	AVAILABLE THRU ASPC-F-CU	AVAILABLE THRU ASPC-F-CU	ON SITE
	UNIT DOSE	YES	YES	YES
	PSYCH SERVICES	YES MONDAY THRU FRIDAY	ON SITE 15-20 HRS/WEEK AVAILABLE THRU ASPC-F-CU	NO
	NURSE ON SITE	0700-1900	12 HOURS/DAY MONDAY THRU FRIDAY WEEKENDS 0700-1900	16 HOURS/DAY
	WHEELCHAIR HANDICAPPED	NO HANDICAPPED: SEE COMMENTS ABOVE	YES HANDICAPPED ASSIGNED ON A CASE BY CASE BASIS	NO
	FULL DUTY STATUS ONLY	NO	NO	NO
	ANY DUTY STATUS	YES	YES	YES

INSTITUTIONAL MEDICAL AND HEALTH CARE CAPABILITIES MATRIX

PAGE 5 OF 8 PAGES		INSTITUTIONAL FACILITIES AND UNITS		
MEDICAL AND HEALTH CARE CAPABILITIES	TYPE OF CARE	ASPC-Perryville All Units	ASPC-Phoenix Alhambra Reception	ASPC-Phoenix AZ Center for Women
	COMMENTS	Chronic conditions can be handled at Perryville as long as the inmate does not require hospital type care. Perryville can not accept wheelchairs or physically handicapped inmates as there are no ramps and inmates are required to climb stairs. Outside consult services are available. ETA ER: MMC = 30-35 min West Valley ER: 5 min AIR EVAC ETA ER: 20 min (MMC - Phoenix).	This is a Reception Center and under a Federal Court order to maintain no more than 207 reception beds and 30 Resident Worker beds. This facility has no provisions for holding inmates for medical reasons. The court has also mandated that all inmates be processed through Alhambra in 10 days, therefore all inmates with chronic, unstable conditions will be transferred to other facilities. ETA ER: 5 min; AIR EVAC ETA ER: N/A	NO COMMENTS ETA ER: 5 minutes AIR EVAC ETA ER: N/A.
	FNP MD/PA	FULL TIME	YES MONDAY THRU FRIDAY	YES
	DENTAL	ON SITE	YES MONDAY THRU FRIDAY	ON SITE 16 HOURS/WEEK
	PHARMACY	ON SITE	YES MONDAY THRU FRIDAY	AVAILABLE THRU ASPC-PHX-ARTC
	X-RAY	ON SITE	YES MONDAY THRU FRIDAY	AVAILABLE THRU ASPC-PV
	UNIT DOSE	YES	YES	YES
	PSYCH SERVICES	2 DAYS/WEEK	YES MONDAY THRU FRIDAY	FULL TIME PSYCHOLOGIST PSYCHIATRIST 8 HRS/WEEK
	NURSE ON SITE	24 HOURS/DAY	24 HOURS/DAY 7 DAYS/WEEK	MON THRU FRI 0800-1900 WEEKENDS 0730-1530 EMERGENCY: ARTC
	WHEELCHAIR HANDICAPPED	NO	YES	YES
	FULL DUTY STATUS ONLY	NO	NO	NO
	ANY DUTY STATUS	YES	YES	YES

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INSTITUTIONAL MEDICAL AND HEALTH CARE CAPABILITIES MATRIX

PAGE 6 OF 8 PAGES	INSTITUTIONAL FACILITES AND UNITS		
MEDICAL AND HEALTH CARE CAPABILITIES	TYPE OF CARE	ASPC-Phoenix Aspen Unit	ASPC-Phoenix ARTC BAKER-Ward	ASPC-Phoenix Flamenco
	COMMENTS	This is a DWI Center. All services are provided by ASPC-PHX Alhambra ARTC. ETA ER - 3 minutes. AIR EVAC ETA ER: N/A	This is a licensed psychiatric unit. Admission is by the Clinical Director only. ETA ER - 3 min; AIR EVAC ETA ER: N/A	This is a licensed behavioral health unit. Admission is by the Psychiatrist only. All services are available.
	FNP MD/PA	FULL TIME	YES	FULL TIME
	DENTAL	AVAILABLE FRM ARTC	YES	FROM ARTC FOR MEN FROM ACW FOR WOMEN
	PHARMACY	AVAILABLE FRM ARTC	YES	AVAILABLE FRM ARTC
	X-RAY	AVAILABLE FRM ARTC	YES	AVAILABLE FRM ARTC MEN & WOMEN
	UNIT DOSE	YES	YES	YES
	PSYCH SERVICES	AVAILABLE FRM ARTC	YES	YES
	NURSE ON SITE	2 HOURS ON SITE 24 HRS/DAY FRM ARTC	YES	24 HOURS/DAY
	WHEELCHAIR	YES	YES	YES
	FULL DUTY STATUS ONLY	NO	NO	NO
	ANY DUTY STATUS	YES	YES	YES

INSTITUTIONAL MEDICAL AND HEALTH CARE CAPABILITIES MATRIX

PAGE 7 OF 8 PAGES — INSTITUTIONAL FACILITES AND UNITS

MEDICAL AND HEALTH CARE CAPABILITIES

TYPE OF CARE	ASPC-Safford All Areas of the Unit	ASPC-Tucson All Units	ASPC-Winslow All Units
COMMENTS	This facility can not care for chronic, unstable conditions. It is also inappropriate for chronic unstable psych conditions. If an inmate requires outside consults or treatment, he should not be sent to ASPC-Safford as services are 4-5 hours away. Inmates with respiratory conditions or conditions affected by high altitude should not be sent this facility. ETA ER: 15 min (Limited Services Only); AIR EVAC ETA ER: N/A AIR EVAC ETA ER: N/A	Bedside nursing is not available at ASPC-Tucson. None of the housing units are on ground level, all require some stair climbing, some as many as 10-12 steps. Follow up for outside specialty clinics is available. ETA ER: 30 min; AIR EVAC ETA ER: 10 min (St. Mary's)	This facility is unable to care for chronic, unstable conditions, such as insulin dependent diabetics. Cardiac and respiratory conditions should not be sent to Winslow. There are limited capabilities for outside consults, many have to be sent to Phoenix (three and a half hours one-way). There are no capabilities for on-going outside treatments, such as physical therapy. ETA ER: 10 min (Limited Services Only); AIR EVAC ETA ER: 50 min (Flagstaff).
FNP MD/PA	20 HOURS/WEEK	FULL TIME	YES
DENTAL	ON SITE 1 DAY/WEEK	ON SITE	YES
PHARMACY	SUPPLIED THRU ASPC-FG	ON SITE	ON SITE
X-RAY	CONTRACT ONLY	ON SITE FULL TIME CONTRACT: WEEKLY FLUORO	NO
UNIT DOSE	YES	YES	5 DAYS/WEEK (M-F) ONLY
PSYCH SERVICES	NO	16 HOURS/WEEK	NO
NURSE ON SITE	16 HOURS/DAY 7 DAYS/WEEK	FULL TIME	16 HOURS/DAY 5 DAYS/WEEK WEEKENDS ON CALL
WHEELCHAIR	NO	NO HANDICAPPED ASSIGNED ON CASE BY CASE BASIS; MUST BE TOTAL SELF-CARE	NO
FULL DUTY STATUS ONLY	NO	NO	NO
ANY DUTY STATUS	YES	YES	YES

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8. The Reclassification Conversion Worksheet shall be signed by the preparing Classification Officer. After review for accuracy and the conclusion of the reclassification hearing the Classification Committee Chairperson shall sign the Reclassification Conversion Worksheet.

9. The ICSS, the Reclassification Conversion Worksheet, the RCSS and any other appropriate supporting documentation shall be sent to the Central Classification Office after the Institutional Administrator has signed approved the recommendations.

C. RECLASSIFICATION CONVERSION WORKSHEET

A sample ADC Form 70501128 is included as the last page of this Appendix. Because of the very low volume of usage required of this form it is not available in a printed or NCR paper type format. Local reproduction of the form by photocopy is authorized whenever its use is required. The original and two (2) copies must be prepared. All three copies shall be forwarded to Central Classification with the inmate's ICSS, RCSS, and other supporting documents. The original copy shall be filed in the inmate's master record file, two (2) copies shall be returned to the institution. One of these returned copies shall be filed in the institutional file with other documents. One copy shall be provided the inmate with the inmate's copy of the ICSS and RCSS.

ARIZONA DEPARTMENT OF CORRECTIONS
RECLASSIFICATION CONVERSION WORKSHEET

Inmates Name: _____ Number: _____

Initial Classification Scores: Public Risk (P) _____ Institutional Risk (I) _____

Initial Classification Retroactive Conversion Date: _____/_____/_____

ANNUAL REVIEW	DATE OF REVIEW	VIOLATIONS		COMMENTS	SCORES	
		MAJORS	MINORS		P	I
1st						
2nd						
3rd						
4th						
5th						
6th						
7th						
8th						
9th						
10th						

Prepared By: _____ ICC Chairperson: _____

Date Prepared: _____/_____/_____ Hearing Date: _____/_____/_____

RECLASSIFICATION CONVERSION WORKSHEET

THE USE OF BLANK PHOTOCOPIES OF THIS FORM IS AUTHORIZED

DISTRIBUTION: Master Record File Institutional File Inmate Copy

FORM 7C501128
10/90

ASP [illegible]

THIS NOTE PAGE HAS BEEN PRO[illegible] TO ALLOW THE MANUAL USERS TO INSER[illegible]ES INTO THE MANUAL WHEREVER NEEDED. IT IS RECOMMENDED THA[illegible] NO NOTES BE MADE ON THE ORIGINAL PRINTED COPY OF THE MANUAL. THIS PAGE SHOULD BE PHOTOCOPIED. THE PHOTOCOPIES CAN THEN BE INSERTED AND USED FOR NOTES ANYWHERE IN THE MANUAL. THE PAGE NUMBER HAS BEEN ELIMINATED SO USERS CAN WRITE-IN THEIR OWN PAGE NUMBERS AT THE BOTTOM.

NOTES

CLASSIFICATION REFERENCES

The following listing of Arizona Department of Corrections policy publications is provided for information and compliance as these policies may impact the inmate classification process. It is recommended that copies of each of these publications be kept with the Classification Operating Manual to facilitate easy reference. When copying policies, the current Policy Receipt Newsletter, which provides the Alpha Index and the Numerical Table of Contents to policy should be consulted to insure that a copy is also obtained of any pen-and-ink change, and/or any memorandum or other addendum to the policy being copied.

Type	Number	Policy or Publication Title	Date
DMO	87-29	Inmate Statewide Drivers	07-30-87
DMO	89-06	Agreement on Detainers	04-27-89
DMO	89-23	Parole Eligibility Class System	07-14-89
DMO	89-25	Operation of Correctional Release Center (CRCs); Placement and Removal Criteria	08-11-89
DMO	90-09	Criteria for Temporary Release of Inmates	06-20-90
IMP	103.2.4	Staff - Inmate/Juvenile Offender Relationships	08-23-89
IMP	103.3.1	Rules of Discipline - Adult Inmates	04-06-87
IMP	301.24	Inmate Urine Collection and Testing	09-15-88
IMP	302.0.2	Level of Supervision for Inmates Participating in Off-Institution Activities	06-13-89
IMP	302.14	Inmate Detention	11-13-89
IMP	303.2	Compassionate Leave	03-04-87
IMP	303.7	Inmate Work Furlough	01-05-90
IMP	303.10	Provisional Release	06-20-90
IMP	304.4	Staff-Inmate Communications/Inmate Letter	01-05-88
IMP	304.10	Protective Segregation	11-03-89
IMP	309.0	Inmate Work Incentive Pay Plan	07-26-88
IMP	500.1	Inmate Classification	01-01-91
IMP	502.0	Transfer of Inmates Pursuant to Interstate Corrections Compact (ICC)	11-01-88
IMP	502.4	Inmate Release Procedures	12-19-88
IMP	708.01	Sex Offender Treatment Program	09-19-89

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APPENDIX K

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ARIZONA DEPARTMENT OF CORRECTIONS

INTERNAL MANAGEMENT POLICY

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Subject: FORFEITURE/RESTORATION OF TIME CREDITS			No: 503.1
Supersedes: ADC IMP 503.1, 2/27/91	Distribution: A	OPR: DIR	Effective: NOVEMBER 6, 1991

1.0 POLICY: The Director may authorize the forfeiture or restoration of time credits pursuant to A.R.S. 31-251 through 31-253, A.R.S. 41-1604.07 and ADC Policy #103.3.1, Rules of Discipline - Adult Inmates.

2.0 AUTHORITY:

A.R.S. 41-1604, Duties and Powers of the Director.

A.R.S. 41-1604.06, Parole Eligibility Certification; Classifications; Appeal; Recertification.

A.R.S. 41-1604.07, Earned Release Credits; Forfeiture; Restoration.

A.R.S. 31-251, Labor Required of Prisoners; Deduction from Sentence for Performing Labor; Forfeiture.

A.R.S. 31-252, Double Time Deducted for Certain Labor as Trustee, Forfeiture.

A.R.S. 31-253, Restoration of Forfeited Time Credits.

3.0 RESPONSIBILITY: Assistant Directors, Wardens, Deputy Wardens, Administrators and Bureau Administrators shall ensure that all employees understand and comply with this policy.

4.0 APPLICABILITY: This policy applies to all inmates and to staff responsible for processing requests for forfeiture and/or restoration of time credits.

5.0 DEFINITIONS:

5.1 New Code Prisoners - Inmates whose offenses occurred on or after October 1, 1978.

5.2 Old Code Prisoners - Inmates whose offenses occurred before October 1, 1978.

5.3 Rules of Discipline - The document provided to inmates to explain the disciplinary system.

5.4 Time Credits

5.4.1 Double Time (Old Code Prisoners) - Time credits earned while:

5.4.1.1 Working on the public highways or the prison farms as a trustee; or working outside the prison walls and not requiring armed guards;

5.4.1.2 Performing any other assignment of confidence and trust either within or outside the prison walls; or

5.4.1.3 Pursuant to rules established by the Department.

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5.4.2 Earned Release Credits (New Code Prisoners) - Time credits earned as a result of placement in Parole Class I.

5.4.3 Good Time (Cooper Time) (Old Code Prisoners) - Time credits earned by performing faithful labor each day during the term of imprisonment and complying with Department rules; or if unable to work, by complying with Department rules.

6.0 PROCEDURES:

6.1 Forfeiture of Time Credits shall be at the sole discretion of the Director who may consider, but is not limited to, the following:

6.1.1 Earned release credits may be forfeited when an inmate fails to:

6.1.1.1 Comply with Department rules resulting in being reclassified to a higher risk status; and

6.1.1.2 Demonstrate a continual willingness to volunteer for or successfully participate in work, education, treatment or training programs.

6.1.2 Double time credits may be forfeited when an inmate violates Departmental rules. A major rule violation constitutes a breach of trust.

6.1.3 Good time (Cooper Time) credits may be forfeited when an inmate:

6.1.3.1 Commits an act of assault;

6.1.3.2 Endangers another's life; or

6.1.3.3 Disregards Department rules and regulations with violence or intent to do harm.

6.2 The Institutional Discipline Committee may recommend the forfeiture of time credits for inmates found guilty of a major violation, in accordance with the Rules of Discipline and pursuant to the authority of A.R.S. 31-251, 31-252 and 41-1604.07.

6.2.1 Prior to the Committee hearing the Discipline Coordinator shall request, from the Time Computation Unit, Offender Services Bureau, a calculation of all time credits earned to the date of the violation and present this information to the Committee.

6.3 To recommend the forfeiture of time credits, the Institutional Discipline Committee shall:

6.3.1 Prepare a Forfeiture of Time Credits letter, Attachment A or B, depending on the inmate's status, for the Director's signature and a Time Credits Earned Memo, ADC Form #41001015.

6.3.2 Prepare a forfeiture packet that includes the Forfeiture letter, Time Credits Earned Memo and the rest of the Discipline Forms, and

6.3.2.1 If a disciplinary appeal is not filed on the Committee findings, forward the packet to the Time Computation Unit

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within five workdays following the completion of the appeal period.

6.3.2.2 If an appeal is filed on the Committee findings, forward the packet to the Central Office Appeals Officer within five workdays of receipt of the Time Credits Calculation.

6.3.2.2.1 If the findings, including the recommendation for time forfeiture are upheld, the Appeals Officer shall forward the packet to the Time Computation Unit within five workdays of the appeals decision.

6.3.2.2.2 If the findings are not upheld or the time forfeiture recommendation is vacated, the forfeiture packet shall be returned to the institution with the appeal decision.

6.3.3 Within fifteen workdays of receiving the packet, the Time Computation Unit shall:

6.3.3.1 Ensure the inmate has earned sufficient time credits for the requested forfeiture and complete the Time Credits Earned Memo.

6.3.3.2 Process forfeiture requests for inmates released on temporary, mandatory, provisional and parole releases, as follows:

6.3.3.2.1 Determine if the inmate would still be eligible to be on a release status if the forfeiture is approved.

6.3.3.2.2 Flag the forfeiture request with the effect the forfeiture would have on the inmate's status.

6.3.3.2.3 Refer the request to the Administrator of the Bureau of Offender Services for review and final determination for processing of the forfeiture request.

6.4 Denied Recommendations - If the Director denies the recommended forfeiture, the Director shall return the forfeiture packet to the appropriate Institutional Discipline Committee.

6.5 Approved Recommendations - If the Director approves the recommended forfeiture, the Director shall sign the letter and return the forfeiture packet to the Time Computation Unit. The Time Computation Unit shall:

6.5.1 Input and update AIMS to reflect the correct recalculation of release eligibility dates.

6.5.2 Advise the institutions of new release dates via message router if the inmate is within 30 days of a release date at the time the forfeiture is approved.

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6.5.3 Notify Adult Parole of new expiration dates for a released inmate still eligible to remain on release status.

6.5.4 Notify Adult Parole for return to custody when an approved forfeiture results in an inmate being no longer eligible for release.

6.5.5 Place a copy of the approved forfeiture in the master record file.

6.5.6 Within 15 workdays of receipt, send a copy of the approved forfeiture to the inmate and institutional inmate records.

6.6 Restoration of Forfeited Time Credits

6.6.1 An inmate shall be eligible to apply for restoration of time credits forfeited as a result of a Group I or II violation of the Rules of Discipline, 12 months from the date the forfeiture was signed by the Director if the inmate:

6.6.1.1 Remains in a classification that is eligible for time credits for at least 12 consecutive months immediately ~~proceeding~~ preceding the application. A+IV 02/14/92

6.6.1.2 Remains free of major disciplinary violations for at least 12 consecutive months.

6.6.1.3 Remains free of minor disciplinary violations for at least six consecutive months.

6.6.1.4 Receives work evaluations with a rating of 12 or higher for at least six consecutive months.

6.6.1.5 Receives program evaluations with a rating of average or above for at least six consecutive months.

6.6.1.6 Has no pending disciplinary charges at the time of application or during the application review process.

6.6.2 An inmate shall be eligible to apply for restoration of time credits forfeited as a result of a Group III or IV violation of the Rules of Discipline, six months from the date the forfeiture was signed by the Director if the inmate:

6.6.2.1 Remains in a classification that is eligible for time credits for at least six consecutive months immediately ~~proceeding~~ preceding the application. A+IV 02/14/92

6.6.2.2 Remains free of major disciplinary violations for at least six consecutive months.

6.6.2.3 Remains free of minor disciplinary violations for at least three consecutive months.

6.6.2.4 Receives work evaluations with a rating of average or above for at least three consecutive months.

6.6.2.5 Receives program evaluations with a rating of average or above for at least three consecutive months.

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6.6.2.6 Has no pending disciplinary charges at the time of application or during the application review process.

6.6.3 If the Correctional Program Officer (CPO) determines that the inmate is ineligible under section 6.6.1 or 6.6.2, Level I of a Recommendation for Restoration of Forfeited Time Credits ADC Form #70501190 (recommendation form), shall be completed indicating the section or sections the inmate does not comply with. The CPO shall then forward the recommendation form to the Warden/Deputy Warden for Level II recommendation.

6.6.3.1 If the Warden/Deputy Warden agrees with the recommendation made by the CPO, the Warden/Deputy Warden shall complete Level II of the recommendation form indicating agreement with the CPO recommendation, and copies of the recommendation form shall be sent to:

6.6.3.1.1 The inmate, through the assigned CPO;

6.6.3.1.2 The Institutional Inmate Records File; and

6.6.3.1.3 The Central Office, Master Record File.

6.6.3.2 If the Warden/Deputy Warden disagrees with the recommendation made by the CPO, the Warden/Deputy Warden shall complete Level II of the recommendation form indicating disagreement with the CPO recommendation, and the recommendation form shall be returned to the CPO for preparation of a restoration packet (see section 6.7.2.3).

6.7 Process

6.7.1 The inmate requesting the restoration of forfeited time credits shall:

6.7.1.1 Complete the Application for Restoration of Forfeited Time Credits, ADC Form #70501191.

6.7.1.2 Submit the completed application to the assigned Correctional Program Officer (CPO).

6.7.2 Correctional Program Officers (CPOs) shall:

6.7.2.1 Sign and date the application when received.

6.7.2.2 Complete the Recommendation for Restoration of Forfeited Time Credits (recommendation) form, ADC Form #70501190.

6.7.2.3 Prepare a restoration packet which includes:

6.7.2.3.1 A completed application for restoration;

6.7.2.3.2 A recommendation form with a completed Level I recommendation for restoration, <u>if recommending restoration include amount of time credits recommended restored;</u>

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6.7.2.3.3 A completed Time Credits Earned Memo, ADC Form #41001015;

6.7.2.3.4 A copy of the appropriate Director's letter to the inmate on the Forfeiture of Time Credits (Attachment A or B);

6.7.2.3.5 A counselor's progress report;

6.7.2.3.6 A copy of any disciplinary violation forms; and

6.7.2.3.7 A copy of any disciplinary appeal and decision, when applicable.

6.7.2.4 Forward the packet to the Warden/Deputy Warden within ten workdays of receipt of the application for restoration.

6.7.3 Wardens/Deputy Wardens shall:

6.7.3.1 Sign and make a recommendation in the Level II section of the recommendation form, and if recommending restoration include amount of time credits recommended restored.

6.7.3.2 Forward the packet to the Assistant Director of Adult Institutions within five workdays of receipt of the packet.

6.7.4 The Assistant Director of Adult Institutions shall:

6.7.4.1 Sign and make a recommendation in the Level III section of the recommendation form, and if recommending restoration include amount of time credits recommended restored.

6.7.4.2 Forward the packet to the Time Computation Unit within five workdays of receipt of the packet.

6.7.5 Unless otherwise specified by the Director inmates on release status may apply for restoration of forfeited time credits for purposes of receiving an Absolute Discharge.

6.7.6 Releasees requesting the restoration of forfeited time credits shall:

6.7.6.1 Complete the Application for Restoration of Forfeited Time Credits, ADC Form #7051191.

6.7.6.2 Submit the completed application to the Assistant Director, Community Corrections Division for recommendation of approval or denial.

6.7.6.2.1 Within ten workdays, the Assistant Director, Community Corrections Division shall forward the request for restoration to the Time Computation Unit.

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6.7.7 Within ten workdays of receipt, the Time Computation Unit, Bureau of Offender Services, shall:

6.7.7.1 Determine the effect that the restoration would have on the inmate's release eligibility dates.

6.7.7.2 Ensure the restoration does not place the inmate less than thirty days from a release date.

6.7.7.2.1 The Time Computation Unit shall modify the application packet if the restoration request is not in compliance with 6.7.7.2.

6.7.7.3 Complete verification of time credits and sign the recommendation form.

6.7.7.4 Forward the packet to the Director.

6.7.8 The Director shall:

6.7.8.1 Approve or deny the request, check the appropriate section for the restoration of time credits on the recommendation form and sign the form.

6.7.8.2 Forward the packet to the Time Computation Unit within ten workdays of receipt of the packet.

6.8 Approved Restoration Request - The Time Computation Unit, Bureau of Offender Services, shall:

6.8.1 Within ten workdays of receipt of an approval, provide recalculated release dates and a copy of the restoration approval to:

6.8.1.1 The inmate or released inmate;

6.8.1.2 Institutional inmate records or parole office; and

6.8.1.3 Central Office, Master Record File.

6.9 Denied Restoration Request - The Time Computation Unit, Bureau of Offender Services, shall:

6.9.1 Within ten workdays of receipt, send a copy of the denied recommendation to:

6.9.1.1 The inmate or released inmate;

6.9.1.2 Institutional inmate records or parole office; and

6.9.1.3 Central Office, Master Record File.

6.10 Resubmission - When an Application for Restoration of Forfeited Time Credits is denied, an inmate may submit a new application six months from the date of denial of the last application submitted.

6.11 Exceptions - Only the Director may make exceptions to this policy.

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7.0 IMPLEMENTATION: This policy shall be implemented without change on the effective date.

Samuel A. Lewis,
Director

Attachment
A: Sample Director's Letter for Forfeiture of Time Credits - Old Code
B: Sample Director's Letter for Forfeiture of Time Credits - New Code

Forms
Time Credits Earned Memo, ADC Form #41001015
Recommendation for Restoration of Forfeited Time Credits, ADC Form #70501190
Application for Restoration of Forfeited Time Credits, ADC Form #70501191

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APPENDIX L

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INTERNAL MANAGEMENT POLICY

SUBJECT: PAROLE CLASS ELIGIBILITY SYSTEM			NO: 500.2
SUPERSEDES: DMO 89-23, 07/14/89	DISTRIBUTION: A	OPR: AI	EFFECTIVE: JANUARY 24, 1992

1.0 POLICY: Inmates are placed in a parole class based on their classification, their institutional behavior and in accordance with applicable sentencing statutes. The Institutional Classification Committee reviews each inmate's parole class at least every six months.

2.0 AUTHORITY:

A.R.S. 41-1604, Duties and Powers of the Director.

A.R.S. Title 13, Criminal Code.

A.R.S. 31-252, Double Time Deduction for Certain Labor as Trusty; Forfeiture (Old Code).

A.R.S. 31-411, Meetings of Board; Applications for Parole or Discharge; Release Under Supervision of Department of Corrections; Notice of Hearing.

A.R.S. 31-412, Criterion for Release on Parole; Release; Custody of Parolee.

A.R.S. 41-1604.06, Parole Eligibility Certification; Classification; Appeal; Recertification; Definition.

A.R.S. 41-1604.07, Earned Release Credits; Forfeiture; Restoration.

3.0 RESPONSIBILITY: Assistant Directors, Wardens, Deputy Wardens, Administrators and Bureau Administrators shall ensure that all employees understand and comply with this policy.

4.0 APPLICABILITY: All staff and inmates of the Arizona Department of Corrections.

5.0 DEFINITIONS:

5.1 Central Classification - One or more classification staff members, within central office administration, who review and approve actions of the Initial Classification Committee and Institutional Classification Committee.

5.2 Condemned Inmate - An inmate who has been convicted of a Class I felony and has been sentenced to the death penalty.

5.3 Dangerous Psychiatric Offender - An inmate who presents a high risk of potential violence and has been placed in a psychiatric unit, e.g. Flamenco, for psychiatric evaluation and treatment.

5.4 Time Credits (ADC IMP 503.1)

5.4.1 Double Time (Old Code Prisoners) - Time credits earned while:

5.4.1.1 Working on the public highways or the prison farms as a trustee; or working outside the prison walls and not requiring armed guards;

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5.4.1.2 [redacted]forming any other assignment of confidence and trust either within or outside the prison wa[redacted] or

5.4.1.3 Pursuant to policies established by the Department.

5.4.2 Earned Release Credits (New Code Prisoners) - Time credits earned as a result of placement in Parole Class I.

5.4.3 Good Time (Copper Time) (Old Code Prisoners) - Time credits earned by performing faithful labor each day during the term of imprisonment and complying with Department policies; or if unable to work, by complying with Department policies.

5.5 Inmate - A person who is convicted and committed to ADC by any court of record or who is confined by ADC under the provisions of any agreement or compact to which the State or ADC is a party.

5.6 Initial Classification Committee - A committee, within a Departmental reception center, composed of two or more staff members who conduct initial classification reviews. A staff member certified or knowledgeable in classification chairs the Committee.

5.7 Institutional Classification Committee - A committee, within an institution, composed of two or more staff members who conduct reclassification/parole eligibility reviews. A staff member certified or knowledgeable in classification chairs the Committee.

5.8 Parole Class Hearing - A hearing afforded an inmate when the Institutional Classification Committee is considering a change in the inmate's parole class. The inmate is permitted to have staff or inmate representation; however, attorneys are not permitted.

5.9 Parole Classes - A system of nine classes established by the Director of Corrections which indicate parole eligibility or ineligibility required by statute and subject to review by the Legislature.

5.10 Parole Eligible - The status of an inmate who has served the required statutory time of his sentence and is eligible to receive a parole hearing before the Arizona Board of Pardons and Paroles.

5.11 Satisfactory Performance Evaluation - An approved level of effort and participation by an inmate in a work, treatment, educational or training program assignment as evaluated by a work supervisor or other appropriate staff member. Evaluations are completed monthly.

6.0 PROCEDURES:

6.1 Parole Classes

6.1.1 Class I

6.1.1.1 Class I status indicates the inmate is adhering to Departmental policy, procedures and regulations and is receiving satisfactory performance evaluations.

6.1.1.2 Class I inmates are parole eligible and are earning release credits.

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6.1.1.3 Class I applies to inmates whose offense was committed on or after 12 noon, October 1, 1978.

6.1.2 Class II

6.1.2.1 Class II is the baseline parole eligible class in which all inmates are placed upon commitment to ADC.

6.1.2.2 Class II inmates are parole eligible, but do not earn release credits.

6.1.2.3 Class II applies to inmates whose offense was committed on or after 12 noon, October 1, 1978.

6.1.3 Class III

6.1.3.1 Class III takes precedence over and interrupts all other classes.

6.1.3.2 The Institutional Disciplinary Committee places inmates in this class in accordance with the Rules of Discipline.

6.1.3.3 Inmates serving Parole Class III time are not eligible for parole until returned to a parole eligible class (Class I or Class II).

6.1.3.4 For inmates whose date of offense was on or after July 21, 1979, the parole eligibility date is extended one day for each day they remain in Class III.

6.1.3.5 Inmates serving Parole Class III time shall not be eligible to earn release credits until returned to Parole Class I.

6.1.3.6 Class III applies to inmates whose offense was committed on or after 12 noon, October 1, 1978.

6.1.3.7 Class III does not apply to inmates whose offense was committed prior to 12 noon, October 1, 1978.

6.1.4 Class IV

6.1.4.1 Class IV applies to inmates who pose serious threats to the safe and orderly operation of the institution.

6.1.4.2 Inmates serving Parole Class IV time are not eligible for parole until returned to Parole Class I or II.

6.1.4.2.1 For inmates whose date of offense was on or after July 21, 1979, the inmate's parole eligibility date is extended one day for each day the inmate remains in Class IV.

6.1.4.3 Inmates serving Parole Class IV time shall not earn release credits until returned to Parole Class I.

6.1.4.4 Class IV applies to inmates whose offense was committed on or after 12 noon, October 1, 1978.

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6.1.5 Class V

6.1.5.1 Class V is reserved for inmates designated as dangerous, psychiatric offenders.

6.1.5.2 Class V inmates are housed in a mental health facility.

6.1.5.3 Class V inmates are not eligible for parole and do not earn release credits.

6.1.5.3.1 Placement in Class V does not extend the inmate's parole eligibility date.

6.1.5.4 Class V applies to inmates whose offense was committed on or after 12 noon, July 21, 1979.

6.1.6 Class VI

6.1.6.1 Class VI is reserved for inmates sentenced to death.

6.1.6.2 Class VI inmates are not eligible for parole and do not earn release credits.

6.1.6.3 Class VI applies to inmates whose offense was committed on or after 12 noon, October 1, 1978.

6.1.7 Class VII

6.1.7.1 Class VII applies to inmates who are:

6.1.7.1.1 Adhering to the Department's policies and regulations;

6.1.7.1.2 Receiving satisfactory performance evaluations; and

6.1.7.1.3 Not statutorily eligible for parole because of their committing offense.

6.1.7.2 The applicable sentencing statutes prohibit Class VII inmates from earning release credits.

6.1.7.3 Resentencing may result in a Class VII inmate becoming eligible to earn release credits.

6.1.7.3.1 Such release credits shall be calculated retroactively based on the time served in Class VII.

6.1.7.4 Class VII applies to inmates whose offense was committed on or after 12 noon, October 1, 1978.

6.1.8 Class VIII

6.1.8.1 Class VIII inmates are in a position of confidence and trust.

6.1.8.2 Class VIII inmates earn double time (i.e., two-for-one credit) in accordance with A.R.S. 31-352.

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6.1.8.3 Class VIII inmates are parole eligible when they have served the mandatory time in accordance with A.R.S. 31-411 and are not part of the parole classification system as defined by A.R.S. 41-1604.06 and 41-1604.07.

6.1.8.4 Class VIII applies to inmates whose offense was committed prior to 12 noon, October 1, 1978.

6.1.9 Class IX

6.1.9.1 Class IX inmates are not in a position of confidence and trust.

6.1.9.2 Class IX inmates do not earn double time (i.e., two-for-one) credits.

6.1.9.3 Class IX inmates are parole eligible when they have served the mandatory time in accordance with A.R.S. 31-411 and are not part of the parole classification system as defined by A.R.S. 41-1604.06 and 41-1604.07.

6.1.9.4 Class IX applies to inmates whose offense was committed prior to noon, October 1, 1978.

6.2 Parole Class Guidelines

6.2.1 Class II is the baseline parole eligible class in which all inmates are placed upon commitment to ADC.

6.2.2 At the time of initial classification, the Initial Classification Committee recommends placement of the inmate in Class I, continuation in Class II or placement in another class.

6.2.2.1 To provide eligible inmates with an equal opportunity to earn Class I status, Classification shall, within 20 days after sentencing, place all eligible inmates in Parole Class I.

6.2.2.2 Inmates who must serve a mandatory minimum sentence, and whose offense was committed on or after September 27, 1990, shall not be eligible to earn release credits, and shall not be placed in Parole Class I.

6.2.3 In order to earn and remain in parole eligible Class I inmates must continue to participate in recommended work, training, education, and treatment programs.

6.2.4 If an inmate is not earning satisfactory work, training, education and treatment evaluations, the Classification Committee shall review the inmate's case to determine if the inmate shall be continued in Parole Class I or be returned to baseline Parole Class II status for 30, 60, or 90 days.

6.2.4.1 At the end of the specified time period, the Institutional Classification Committee meets with the inmate to determine placement of the inmate in Class I, continuation in Class II or placement in another class.

6.2.5 The Disciplinary Committee shall specify the number of days to be served in Class III, e.g., 30, 60, 90 days.

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6.2.5. Upon completion of the specified number of days, the inmate is returned automatically to his former parole class.

6.2.5.2 An Inmate Status Change (Chrono), ADC Form #40000009, shall be filled out indicating the date the inmate is placed in Parole Class III and the number of days the inmate is to remain in that status.

6.2.5.2.1 All chronos and disciplinary forms shall agree with the corresponding entries in AIMS.

6.2.6 A Classification Committee, which includes a psychiatrist and is appointed by the Director, makes Class V placements.

6.2.7 The designation of Class VIII and IX to old code inmates is solely for the purpose of tracking an old code inmate's earning status for the automated time computation system.

6.2.8 Class IV, VI, VII, VIII and IX are recommended by Initial Classification and Institutional Classification, based on review of the inmates status, or are mandated by the Time Comp Unit, based on review and/or statute requirements.

6.2.9 A Chrono shall be filled out indicating the initial classification action and date and, if applicable, for each subsequent parole class change thereafter.

6.3 Parole Class Eligibility Hearing

6.3.1 Hearing Schedule

6.3.1.1 A parole class eligibility hearing shall be scheduled at six-month intervals and shall normally occur at the time of the inmate's 180 day review.

6.3.1.2 The Warden, Deputy Warden or Administrator may schedule a parole class eligibility hearing whenever a change in parole class is indicated.

6.3.2 Hearing Notification

6.3.2.1 Assigned staff shall notify the inmate of the purpose of the hearing by completing and delivering the Institution Classification Referral Notice, ADC Form #70501114.

6.3.3 Hearing Procedures

6.3.3.1 The hearing procedure shall be conducted in accordance with ADC Policy #500.1, Inmate Classification, and the ADC Classification Operating Manual.

6.3.4 Inmate Appeals

6.3.4.1 The inmate shall have only one appeal opportunity and may only appeal a final decision by Central Classification.

6.3.4.1.1 The inmate may not appeal a recommendation.

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6.3.4.1.2 Class III placement may only be appealed through the Disciplinary Appeal process.

6.3.4.2 To appeal a final decision, the inmate shall submit a written request to the Administrator of the Offender Services Bureau within 15 workdays of receipt of Central Classification's written decision.

6.3.4.2.1 Inmate appeals procedures shall be conducted in accordance with ADC Policy #500.1, Inmate Classification.

6.4 Released Inmates

6.4.1 An inmate released on temporary release, work furlough or home arrest shall remain on inmate status, unless the inmate escapes or absconds. If the inmate was earning release credits/good time credits prior to release, the inmate shall be eligible to continue earning such credits. Inmates whose offense date is on/after October 1, 1978 shall remain in the parole eligibility classification system.

6.4.2 An inmate released on one of the following statuses or technical releases is no longer in the parole class eligibility system, effective the date of the status change:

6.4.2.1 Parole

6.4.2.2 Mandatory release

6.4.2.3 Provisional release

6.4.2.4 Earned release credit date

6.4.2.5 Escape

6.4.2.6 Abscond or absent without leave

6.4.2.7 Vacated sentence

6.4.2.8 Bond

6.4.2.9 Discretionary Release

6.4.3 An inmate released on a status listed in section 6.4.2 shall not be eligible to earn release credits until returned to the custody of the Department or another state/federal prison.

6.4.4 Upon return to custody from a status listed in section 6.4.2 (excluding parole), the inmate shall be returned automatically to his former parole class.

6.4.4.1 An inmate previously assigned to Parole Class II or a noneligible parole class shall be returned to that class to serve the balance of time not served prior to release.

6.4.5 An inmate who receives a new sentence while on release status shall be reviewed by ICC for return to his/her former parole class.

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6.4.6 An inmate who, as a result of a vacated sentence and new trial, receives a new conviction on the same case number as previously sentenced is entitled to credit for all time served and good behavior credits earned prior to the vacated sentence.

6.5 Classification of Returned Inmates - The Institutional Classification Committee shall place all inmates in the appropriate parole class, upon their return to Department custody.

6.5.1 Parole violators shall receive a preliminary (Morissy) hearing and shall not be eligible to earn release credits until placed in the parole class eligibility system.

6.5.1.1 Parole violators with a technical violation are considered in Department custody upon revocation of parole.

6.5.1.2 Parole violators shall be classified within five workdays of the revocation.

6.5.1.3 The effective date for classification of parole violators shall be no later than the revocation date.

6.5.2 Violators of mandatory releases, earned release credit releases, provisional releases and discretionary releases shall receive a release rescission hearing, administered by the Department, prior to placement in the parole class eligibility system.

6.5.2.1 The release violator may waive his right to a hearing.

6.5.2.2 When a violator either waives the hearing or receives a hearing prior to being returned to an ADC facility, the effective date of his classification shall be no later than five workdays from the date the violator is received at an ADC facility.

6.5.2.3 When a hearing has not been held prior to receiving the violator at an ADC facility or the hearing has not been waived, classification shall be no later than five workdays from rescission.

6.5.3 Temporary release/work furlough/home arrest violators shall remain in the parole class eligibility system unless they escape/abscond supervision.

6.5.3.1 Work furlough/home arrest violators shall receive a preliminary (Morissy) hearing.

6.5.3.2 Temporary release violators shall be subject to revocation of release as set forth in the provisions of sections 6.4.2 through 6.4.2.3.

6.6 Dismissal of Parole Classification Placements

6.6.1 The Warden may recommend dismissal of placement in a noneligible parole class III to the Assistant Director of Adult Institutions.

6.6.2 The Administrator, Bureau of Offender Services, may recommend dismissal of parole classification assignments to the Assistant Director of Adult Institutions.

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6.6.3 The Assistant Director of Adult Institutions may dismiss any parole classification assignment if it is determined to be in the best interest of the Department.

7.0 IMPLEMENTATION: This policy shall be implemented without change on the effective date.

Samuel A. Lewis,
Director

FORMS
Institution Classification Referral Notice, ADC Form #70501114
Inmate Status Change, ADC Form #40000009

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APPENDIX M

ARIZONA DEPARTMENT OF CORRECTIONS

INMATE LETTER
RESPONSE

INMATE NAME Leslie Horton ADC# [illegible]

INSTITUTION/UNIT ASPC-Florence/Central Unit

FROM C. Aydlett LOCATION Central Office Time Computation DATE 03-02-93

You have earned 541 days of release credits on the five year, three month sentence.

STAFF SIGNATURE

CA:jmv

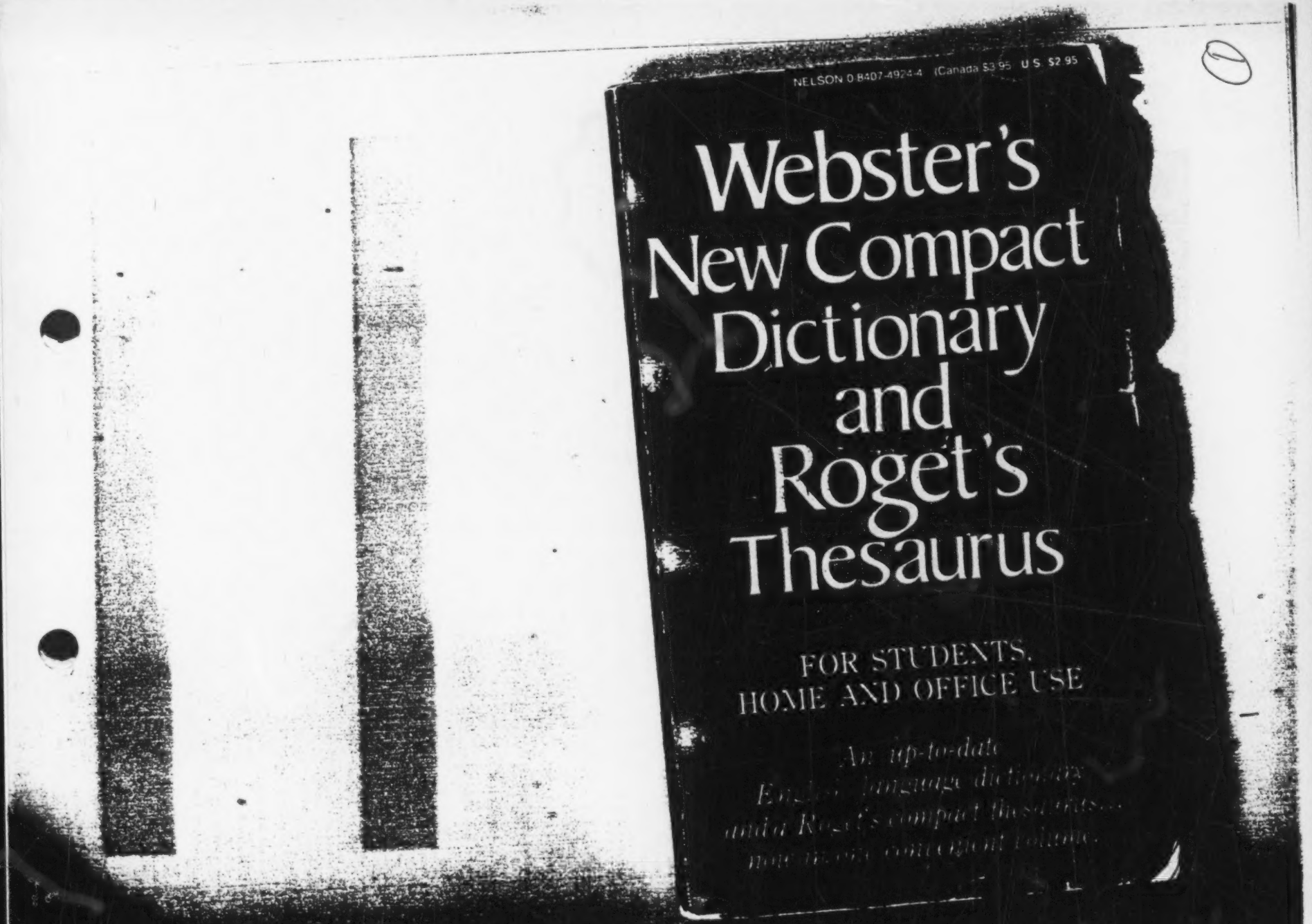
Distribution: White - Central Office Master File
Yellow - Inmate
Pink - Institutional File

FORM 705011688
Rev. 1/89

APPENDIX N

```
 1 035711                                                    04/29/93 11:30:3
 I-I60006                  RELEASE DATE CALCULATION  FINAL RULING      PAGE 001
DOC NO: 035711    NAME: HANLON LESLIE A.                  STATUS: ACTIVE
    COMMITMENT: "E"   COUNT: "01"        TO:          OFFENSE DATE: 01/26/88  STAT:
    FEL.CL: 2  TYPE: 1  PR.FEL: 99  T.C.FL: 6  CL.I DAYS: 1083  FUT.FEL: "A"
                        "EO"                                    "B"
SENTENCE IMPOSED DATE -- 07/26/1988          TIME SERVED TO-DATE          1 YRS   1 MOS
  - COUNTY JAIL CREDITS          178     +--- ADJUSTED RELEASE DATE---- 04/26/1993
  + MAX      ST 3M OD           1917     :      > CREDITS EARNED          541      541
  + OUT-TIME DURING MAXIMUM        0     :      > CREDITS FORFEITED         0        0
SENTENCE EXPIRATION DATE 04/29/1993      :        - CREDITS RESTORED        0
  - MAND.REL.ADJUSTMENT            0     :        - COPPER TIME EARNED      0
ADJUSTED RELEASE DATE--- 04/26/1993 ---+     TENTATIVE RELEASE DATE--- 11/05/1992
                                             - CREDITS PROJECTED         541
  + FLAT     OT OM OD              0       PROVISIONAL RELEASE DATE- INELIGIBLE
  + OUT-TIME DURING FLAT           0         + MAN.REL.ADJUSTMENT        0
MANDATORY MINIMUM DATE--   /  /             EARNED RELEASE DATE------ INELIGIBLE
                                             TIME REMAINING TO SERVE     541
  + MINIM.   ST 3M OD           1917       PAROLE CERT. DATE-------- 10/01 1992
  + OUT-TIME DURING MINIMUM        0       PED (1/2 -    90 DAYS)--- 12/13 1992
  - RELEASE CREDITS              541       WORK FURLOUGH DATE-------
MINIMUM EXPIRATION DATE- 11/01/1991        DISCRETIONARY REL. DATE--   /  /
SENTENCE BEGIN DATE----- 01/26/1988        TEMPORARY RELEASE DATE--- 05/05/1992
        TIME COMP AS OF 02/05/1992   AUDITED RECORD - RELEASE DATES OF
```

APPENDIX O


NELSON 0-8407-4924-4 (Canada $3.95 U.S. $2.95
Webster's New Compact Dictionary and Roget's Thesaurus
FOR STUDENTS, HOME AND OFFICE USE

...ed. —v.t. ...ance, n. —ab'...

...person. —ab"sen-

...1. not paying at-...ent. 1. perfect. 2. pure; unrestricted. —n. 4. that ...erfect, pure, or unmodified. ...tely, adv. ...v.t., -solved, -solving. free ...blame or guilt. —ab"so·lu'tion,

...b', v.t. 1. take in, as a fluid. 2. get attention of; fascinate. —ab·sorb' ...adj., n. —ab·sorp'tive, adj. —ab·...ution, n.

...n', v.i. refrain. —ab·sten'tion, ab'...ence, n. —ab·sti·nent, adj. ...mi·ous, adj. abstaining from ex-

...act, adj. (ab'strakt) 1. reduced to ...entials. 2. non-material; non-specific. —n. 3. summary; abridgment. ...t. (ab strakt') 4. remove, esp. in a ...ct. 5. summarize; abridge. 6. cause ...ention to wander. —ab·strac'tion,

...nse', adj. hard to understand. ...d', adj. nonsensical. —ab·surd'ly, ...—ab·surd'i·ty, ab·surd'ness, n. ...dance, n. great supply. —a·bun'...t, adj. —a·bun'dant·ly, adv.

...e, v.t., -bused, -busing, n. v.t. (ə ...z') 1. use or treat wrongly. —n. (ə ...s') 2. wrong use or treatment. 3. ...h. —a·bu'sive, adj.

...t, v.i., -butted, -butting. meet at an ...or end; border.

...ment, n. construction touching or ...ing to support another construc-...

...mal, adj. measureless in depth; ...tomless.

...s, n. 1. great depth; chasm. 2. hell.

...ia, n. tropical plant with white or ...low flowers.

...demi'c, adj. 1. pertaining to school...ip. 2. unconnected with actuality; ...retical.

...e·my, n. 1. school. 2. cultural or...ganization. —a·ca"de·mi'cian, n.

...de', v.i., -ceded, -ceding. consent.

...er·ate", v., -ated, -ating. v.t., v.i. ...crease in speed. —ac·cel"er·a'tion,

...tor·a"tor, n. vehicle speed control.

...nt, n. (ak'sent) 1. emphasis. 2. natural or regional manner of pronouncing. —v.t. (ak sent') 3. emphasize; ...ss.

...a'tu·ate", v.t., -ated, -ating. emphasize; stress. —ac·cen·tu·a'tion, n.

ac·cept', *v.t.* 1. receive or take willingly. 2. agree to. —**ac·cept'a·ble**, *adj.* —**ac·cept'a·bly**, *adv.* —**ac·cept"a·bil'i·ty**, *n.* —**ac·cept'ance**, *n.*

ac'cess, *n.* 1. means or ... approach. 2. right of approach. ...outburst; attack.

ac·ces'si·ble, *adj.* readily approached or reached. —**ac·ces"si·bil'i·ty**, *n.*

ac·ces'sion, *n.* 1. increase or addition. 2. assumption of office or position.

ac·ces'so·ry, *n.*, *pl.* **-ries.** 1. additional working part, decorative object, etc. 2. companion in a crime.

ac'ci·dent, *n.* unexpected event, usually undesirable. —**ac"ci·den'tal**, *adj.* —**ac"ci·den'tal·ly**, *adv.*

ac·claim', *v.t.* 1. applaud; cheer. —*n.* 2. applause. —**ac"cla·ma'tion**, *n.*

ac'cli·mate", *v.t.*, **-ated, -ating.** accustom to a new environment. Also, **ac·clim'a·tize".**

ac·cliv'i·ty, *n.*, *pl.* **-ties.** upward slope.

ac·com'mo·date", *v.t.*, **-dated, -dating.** 1. provide with food, lodging, etc. 2. adjust to existing conditions. 3. help with a loan, favor, etc. —**ac·com"mo·da'tion**, *n.* —**ac·com'mo·dat"ing**, *adj.*

ac·com"mo·da'tions, *n.*, *pl.* lodgings, esp. temporary ones.

ac·com'pa·ni·ment, *n.* 1. something used with another thing; accessory. 2. music used to supplement that of a singer, soloist, etc.

ac·com'pa·nist, *n.* player of a musical accompaniment.

ac·com'pa·ny, *v.t.*, **-nied, -nying.** 1. travel with. 2. provide a musical accompaniment for.

ac·com'plice, *n.* associate in crime.

ac·com'plish, *v.t.* succeed in doing. —**ac·com'plish·ment**, *n.*

ac·com'plished, *adj.* 1. completed. 2. highly skilled.

ac·cord', *v.t.* 1. grant, as a favor. 2. cause to be in agreement or harmony. —*v.i.* 3. be in agreement or harmony. —*n.* 4. agreement; harmony. 5. consent. —**ac·cord'ance**, *n.* —**ac·cord'ant**, *adj.*

ac·cord'ing, *adj.*, *adv.* 1. **in accordance, 2. according to, a.** in accordance with. b. as stated by.

ac·cord'ing·ly, *adv.* 1. as is indicated or prescribed. 2. therefore.

ac·cor'di·on, *n.* reed instrument with keyboard and bellows. —**ac·cor'di·on·ist**, *n.*

ac·cost', *v.t.* approach and catch the attention of.

ac·count', *v.t.* 1. regard as. —*v.i.* 2. account for, a. explain or interpret. b. justify. c. be condemned or punished for. —*n.* 3. story; narrative. 4. explanation. 5. justification. 6. importance. 7. set of business transactions involving one client or customer. 8. business record.

ac·count'a·ble, *adj.* answerable; responsible.

ac·count'ing, *n.* keeping ... interpretation of business accounts. ...count'ant, *n.* —**ac·count'an·cy**, *n.*

ac cou'ter·ment, *n.* piece of clothing or equipment carried on the person.

ac·cred'it, *v.t.* 1. certify as competent or valid. 2. attribute. —**ac·cred"i·ta'tion**, *n.*

ac·cre'tion, *n.* growth, esp. by accumulation.

ac·crue', *v.i.* be added, esp. in a regular way. —**ac·cru'al**, *n.*

ac·cu'mu·late", *v.*, **-lated, -lating.** *v.t.*, *v.i.* gather; collect. —**ac·cu"mu·la'tion**, *n.* —**ac·cu'mu·la"tive**, *adj.* —**ac·cu'mu·la"tor**, *n.*

ac'cu·rate, *adj.* correct; truthful —**ac'cu·ra·cy**, **ac'cu·rate·ness**, *n.*

ac·curs'ed, *adj.* 1. under a curse. 2. damnable.

ac·cu'sa·tive, *n.* grammatical case for direct object of verb. —**ac·cu'sa·tive**, *adj.*

ac·cuse', *v.t.*, **-cused, -cusing.** denounce; blame. —**ac·cus'er**, *n.* —**ac"cu·sa'tion**, *n.*

ac·cus'tom, *v.t.* cause to become used to something.

ac·cus'tomed, *adj.* usual; customary.

ace, *n.* 1. playing card with one pip. 2. leading expert.

a·cer'bi·ty, *n.* harshness of temper or speech.

ac'e·tate", *n.* fibre or fabric derived from cellulose.

a·cet'y·lene, *n.* highly inflammable gas.

ache, *v.i.*, **ached, aching**, *v.i.* 1. suffer dull pain. —*n.* 2. dull pain.

a·chieve', *v.t.*, **-chieved, -chieving.** succeed in reaching, finishing, or fulfilling. —**a·chieve'ment**, *n.*

ac'id, *n.* 1. chemical compound reacting with base to form salt. 2. sour substance. —*adj.* 4. pertaining to acids. 5. sour. —**a·cid'i·ty**, *n.*

a·cid'u·lous, *adj.* containing or suggesting acid.

ac·knowl'edge, *v.t.*, **-edged, -edging.** 1. admit as true or valid. 2. show appreciation or gratitude for. —**ac·knowl'edg·ment**, *n.*

ac'me, *n.* summit.

ac'ne, *n.* skin complaint.

ac'o·lyte, *n.* priest's assistant; altar boy.

a'corn, *n.* nut of an oak tree.

a·cous'tic, *adj.* pertaining to transmission or reception of sound through air, etc. Also **a·cous'ti·cal.** —**a·cous'ti·cal·ly**, *adv.*

a·cous'tics, *n.* 1. *sing.* science of transmission of sound through air, etc. 2. *pl.* acoustic properties.

ac·quaint', *v.t.* 1. make known. 2. make familiar. —**ac·quain'tance**, *n.*

ac"qui·esce', *v.i.*, **-esced, -escing.** consent or comply. —**ac"qui·es'cence**, *n.* —**ac"qui·es'cent**, *adj.*

ac·quire', *v.t.*, **-quired, -quiring.** obtain; get.

ac"qui·si'tion, *n.* 1. act or instance of acquiring. 2. something acquired.

ac·quis'i·tive, *adj.* 1. pertaining to acquisition. 2. greedy, grasping.

ac·quit', *v.t.*, **-quitted, -quitting.** 1. release from blame or detention. 2. conduct; behave. —**ac·quit'tal**, *n.*

a'cre, *n.* land area equal to 43,560 square feet or 4,047 square meters. —**a'cre·age**, *n.*

ac'rid, *adj.* harsh and bitter.

ac'ri·mo"ny, *n.* harshness of manner or expression. —**ac"ri·mo'ni·ous**, *adj.*

ac'ro·bat", *n.* gymnastic entertainer, esp. one performing high above the ground. —**ac'ro·bat'ic**, *adj.*

ac"ro·nym, *n.* word formed from the initial letters of a phrase or title, as *NASA*.

a·cross', *prep.* 1. from one side to the other of. 2. on the other side. —*adv.* 3. from one side to the other.

act, *n.* 1. something done. 2. *law.* 3. one of the main divisions of a play, etc. —*v.i.* 4. do something. 5. conduct oneself. 6. have an effect on something. 7. perform in a play or plays.

act'ing, *n.* 1. the profession of one who performs in plays. —*adj.* 2. performing a specified function for the time being.

ac'tion, *n.* 1. state of being active. 2. something done. 3. *Informal.* interesting activity. 4. combat. 5. lawsuit.

ac'ti·vate", *v.t.*, **-vated, -vating.** cause to be active. —**ac"ti·va'tion**, *n.*

ac'tive, *adj.* 1. performing actions. 2. having an effect. 3. *Grammar.* pertaining to verbs whose subjects act rather than being acted on. —**ac'tive·ly**, *adv.*

ac·tiv'i·ty, *n.*, *pl.* **-ties.** action, esp. one of a number performed in a sequence.

ac'tor, *n.* man performing in plays. Also *fem.*, **ac'tress.**

ac'tu·al, *adj.* 1. really existing. 2. presently existing. —**ac"tu·al'i·ty**, *n.*

ac'tu·al·ly *adv.* 1. really. 2. presently. 3. in fact; nevertheless.

ac'tu·ar'y, *n.*, *pl.* **-aries.** mathematician for an insurance company. —**ac"tu·ar'i·al**, *adj.*

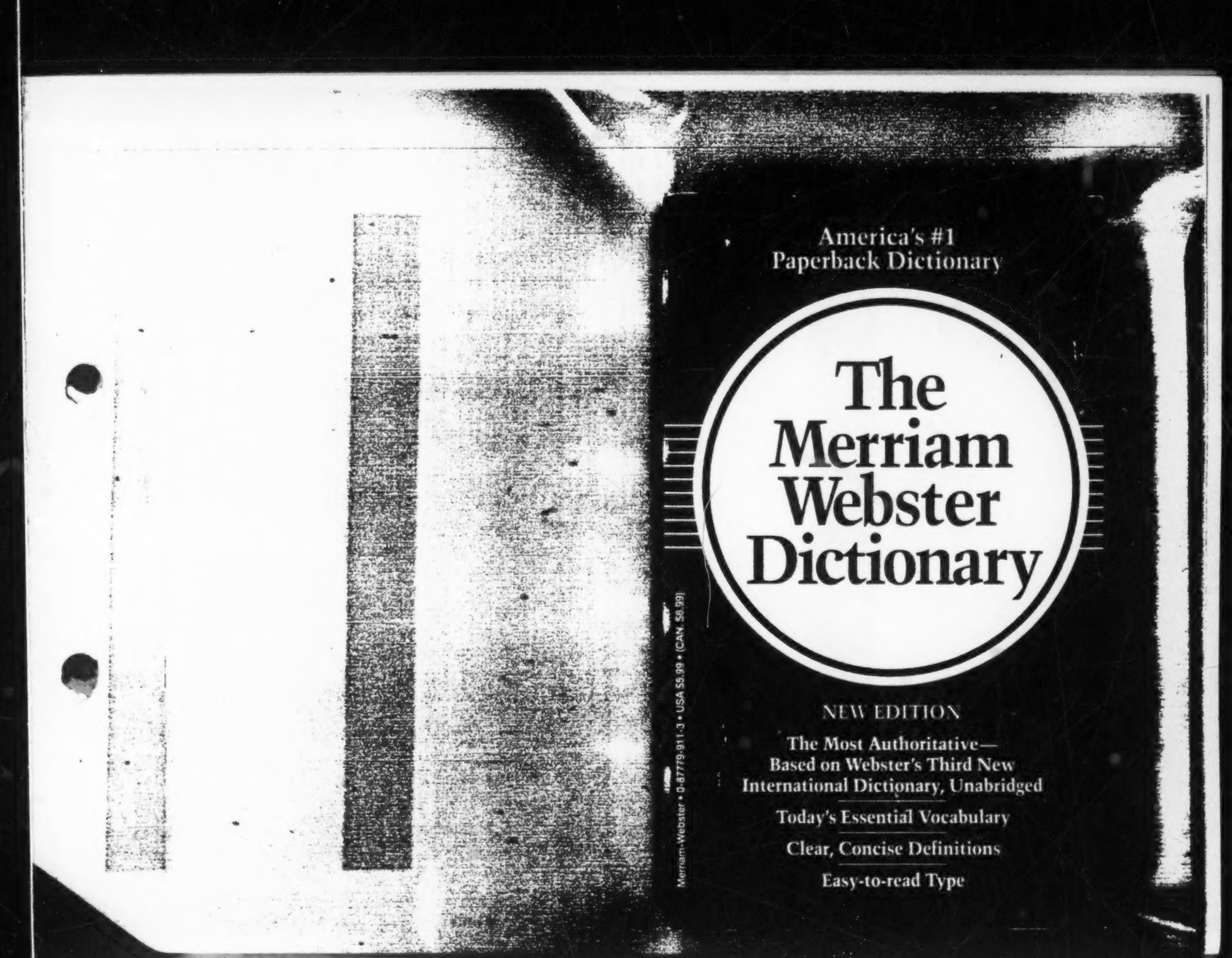
ac'tu·ate", *v.t.*, **-ated, -ating.** cause to act.

a·cu'men, *n.* sharpness of mind.

a·cute', *adj.* 1. sharp. 2. mentally keen. 3. highly sensitive or perceptive. 4. severely threatening or distressing. —**a·cute'ly**, *adv.* —**a·cute'ness**, *n.*

ad'age, *n.* old saying.

APPENDIX P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...ject (*whiteness* is an ~ having only intrinsic form ... or no pictorial representation painting) — **ab-stract-ly** *adv* ...tract-ness *n*

ab-strac-tion \ab-'strak-shən\ *n* **1** : the act of abstracting : the state of being abstracted **2** : an abstract idea **3** : an abstract work of art

ab-struse \ab-'strüs\ *adj* : hard to understand : RECONDITE — **ab-struse-ly** *adv* — **ab-struse-ness** *n*

ab-surd \əb-'sərd, -'zərd\ *adj* [MF *absurde*, fr. L *absurdus*, fr. *ab-* from + *surdus* deaf, stupid] : RIDICULOUS, UNREASONABLE — **ab-surd-ly** *adv* — **ab-surd-i-ty** \-'sər-də-tē, -'zər-\ *n* — **ab-surd-ly** *adv*

abun-dant \ə-'bən-dənt\ *adj* [ME, fr. MF, fr. L *abundant-*, *abundans*, prp. of *abundare* to abound, fr. *ab-* from + *unda* wave] : more than enough : amply sufficient syn copious, plentiful, ample, bountiful — **abun-dance** \-dəns\ *n* — **abun-dant-ly** *adv*

1abuse \ə-'byüs\ *n* **1** : a corrupt practice **2** : MISUSE (drug ~) **3** : coarse and insulting speech **4** : MISTREATMENT (child ~)

2abuse \ə-'byüz\ *vb* **abused; abus-ing 1** : to put to a wrong use : MISUSE **2** : MISTREAT **3** : to attack in words : REVILE — **abus-er** *n* — **abu-sive** \-'byü-siv\ *adj* — **abu-sive-ly** *adv* — **abu-sive-ness** *n*

abut \ə-'bət\ *vb* **abut-ted; abut-ting** : to touch along a border : border on

abut-ment \ə-'bət-mənt\ *n* : the part of a structure (as a bridge) that supports weight or withstands lateral pressure

abut-ter \ə-'bə-tər\ *n* : one that abuts; *esp* : the owner of a contiguous property

abys-mal \ə-'biz-məl\ *adj* **1** : immeasurably deep : BOTTOMLESS **2** : absolutely wretched (~ living conditions of the poor) — **abys-mal-ly** *adv*

abyss \ə-'bis\ *n* **1** : the bottomless pit in old accounts of the universe **2** : an immeasurable depth

abys-sal \ə-'bi-səl\ *adj* : of or relating to the bottom waters of the ocean depths

ac *abbr* account

-ac *n suffix* : one affected with (hypochondriac)

Ac *symbol* actinium

AC *abbr* **1** air-conditioning **2** alternating current **3** [L *ante Christum*] before Christ [*ante cibum*] before meals **5** [*alternating current*]

acacia \ə-'kā-shə\ *n* : any of numerous leguminous trees or shrubs with round white or yellow flower clusters and often fernlike leaves

acad *abbr* academic; academy

ac-a-deme \'a-kə-ˌdēm, ˌa-kə-'\ *n* : SCHOOL; *also* : academic environment

1ac-a-dem-ic \ˌa-kə-'de-mik\ *n* : a person who is academic in background, outlook, or methods

2academic *adj* **1** : of, relating to, or associated with schools or colleges **2** : literary or general rather than technical **3** : theoretical rather than practical — **ac-a-dem-i-cal-ly** \-mi-k(ə-)lē\ *adv*

ac-a-de-mi-cian \ə-ˌka-də-'mi-shən, ˌa-kə-də-\ *n* **1** : a member of a society of scholars or artists **2** : ACADEMIC

ac-a-dem-i-cism \ˌa-kə-'de-mə-ˌsi-zəm\ *also* **acad-e-mism** \ə-'ka-də-ˌmi-zəm\ *n* **1** : a formal academic quality **2** : purely speculative thinking

acad-e-my \ə-'ka-də-mē\ *n, pl* **-mies** [Gk *Akadēmeia*, school of philosophy founded by Plato, fr. *Akadēmeia*, gymnasium where Plato taught, fr. *Akadēmos* Greek mythological hero] **1** : a school above the elementary level; *esp* : a private high school **2** : a society of scholars or artists

acan-thus \ə-'kan-thəs\ *n, pl* **acanthus** or **acanthus-es** **1** : any of a genus of prickly herbs of the Mediterranean region **2** : an ornamentation (as on a column) representing the leaves of the acanthus

a cap-pel-la *also* **a ca-pel-la** \ä-kə-'pe-lə\ *adv or adj* [It *a cappella* in chapel style] : without instrumental accompaniment

acc *abbr* accusative

ac-cede \ak-'sēd\ *vb* **ac-ced-ed; ac-ced-ing 1** : to become a party to an agreement **2** : to express approval **3** : to enter upon an office syn agree, acquiesce, assent, consent, subscribe

ac-cel-er-ate \ik-'se-lə-ˌrāt, ak-\ *vb* **-at-ed; -at-ing 1** : to bring about earlier **2** : to speed up : QUICKEN — **ac-cel-er-a-tion** \-ˌse-lə-'rā-shən\ *n*

ac-cel-er-a-tor \ik-'se-lə-ˌrā-tər, ak-\ *n* **1** : one that accelerates **2** : a pedal for controlling the speed of a motor vehicle engine **3** : an apparatus for imparting high velocities to charged particles

ac-cel-er-om-e-ter \ik-ˌse-lə-'rä-mə-tər, ak-\ *n* : an instrument for measuring acceleration or vibrations

1ac-cent \'ak-ˌsent, ak-'sent\ *vb* : STRESS, EMPHASIZE

2ac-cent \'ak-ˌsent\ *n* **1** : a distinctive manner of pronunciation (a foreign ~) **2** : prominence given to one syllable of a word esp. by stress **3** : a mark (as ´ ` ^) over a vowel used usu. to indicate a difference in pronunciation

from a vowel not so marked — **ac-cen-tu-al** \ak-'sen-chə-wəl\ *adj* — **ac-cen-tu-ate** \ak-'sen-chə-ˌwāt\ *vb* **-at-ed; -at-ing** : ACCENT — **ac-cen-tu-a-tion** \-ˌsen-chə-'wā-shən\ *n*

ac-cept \ik-'sept, ak-\ *vb* **1** : to receive willingly **2** : to agree to **3** : to assume an obligation to pay

ac-cept-able \ik-'sep-tə-bəl, ak-\ *adj* : capable or worthy of being accepted — **ac-cept-abil-i-ty** \ik-ˌsep-tə-'bi-lə-tē, ak-\ *n*

ac-cep-tance \ik-'sep-təns, ak-\ *n* **1** : the act of accepting **2** : the state of being accepted or acceptable **3** : an accepted bill of exchange

ac-cep-ta-tion \ˌak-ˌsep-'tā-shən\ *n* : the generally understood meaning of a word

1access \'ak-ˌses\ *n* **1** : capacity to enter or approach **2** : a way of approach : ENTRANCE

2access *vb* : to get at : gain access to

ac-ces-si-ble \ik-'se-sə-bəl, ak-, ek-\ *adj* **1** : capable of being reached (~ by train) **2** : capable of being used, seen, or known : OBTAINABLE (~ information) — **ac-ces-si-bil-i-ty** \-ˌse-sə-'bi-lə-tē\ *n*

ac-ces-sion \ik-'se-shən, ak-\ *n* **1** : increase by something added **2** : something added **3** : the act of coming to a high office or position

ac-ces-sory *also* **ac-ces-sar-y** \ik-'se-sə-rē, ak-\ *n, pl* **-ries 1** : a person who though not present abets or assists in the commission of an offense **2** : something helpful but not essential syn appurtenance, adjunct, appendage, appendix — **accessory** *adj*

ac-ci-dent \'ak-sə-dənt\ *n* **1** : an event occurring by chance or unintentionally **2** : CHANCE (met by ~) **3** : a nonessential property

1ac-ci-den-tal \ˌak-sə-'dent-ᵊl\ *adj* **1** : happening unexpectedly or by chance **2** : happening without intent or through carelessness syn casual, fortuitous, incidental, chance — **ac-ci-den-tal-ly** \-'den-tᵊl-ē\ *also* **ac-ci-dent-ly** \-'dent-lē\ *adv*

2accidental *n* : a musical note foreign to a key indicated by a signature

ac-claim \ə-'klām\ *vb* : APPLAUD, PRAISE **2** : to declare by acclamation syn extol, laud, commend, hail — **acclaim** *n*

ac-cla-ma-tion \ˌa-klə-'mā-shən\ *n* **1** : loud eager applause **2** : an overwhelming affirmative vote by shouting or applause rather than by ballot

ac-cli-mate \'a-klə-ˌmāt, ə-'klī-mət\ *vb* **-mat-ed; -mat-ing** : ACCLIMATIZE — **ac-cli-ma-tion** \ˌa-klə-'mā-shən, -ˌklī-\ *n*

ac-cli-ma-tize \ə-'klī-mə-ˌtīz\ *vb* **-tized; -tiz-ing** : to accustom or become accustomed to a new climate or situation — **ac-cli-ma-ti-za-tion** \-ˌklī-mə-tə-'zā-shən\ *n*

ac-cliv-i-ty \ə-'kli-və-tē\ *n, pl* **-ties** : an ascending slope

ac-co-lade \'a-kə-ˌlād\ *n* [F, fr. *accoler* to embrace, fr. L *ad-* to + *collum* neck] : an expression of praise : AWARD

ac-com-mo-date \ə-'kä-mə-ˌdāt\ *vb* **-dat-ed; -dat-ing 1** : to make fit or suitable : ADAPT, ADJUST **2** : HARMONIZE, RECONCILE **3** : to provide with something needed **4** : to hold without crowding **5** : to undergo visual accommodation

ac-com-mo-dat-ing *adj* : OBLIGING

ac-com-mo-da-tion \əˌkä-mə-'dā-shən\ *n* **1** : something supplied to satisfy a need; *esp* : LODGINGS — usu. used in pl. **2** : the act of accommodating : ADJUSTMENT **3** : the automatic adjustment of the eye for seeing at different distances

ac-com-pa-ni-ment \ə-'kəm-pə-nē-mənt, -'kəmp-nē-\ *n* : something that accompanies another; *esp* : subordinate music to support a principal voice or instrument

ac-com-pa-ny \-nē\ *vb* **-nied; -ny-ing 1** : to go or occur with : ATTEND **2** : to play an accompaniment for — **ac-com-pa-nist** \-nist\ *n*

ac-com-plice \ə-'käm-plis, -'kəm-\ *n* : an associate in crime

ac-com-plish \ə-'käm-plish, -'kəm-\ *vb* : to bring to completion syn achieve, effect, execute, perform — **ac-com-plish-er** *n*

ac-com-plished *adj* **1** : EXPERT, SKILLED **2** : established beyond doubt

ac-com-plish-ment \ə-'käm-plish-mənt, -'kəm-\ *n* **1** : COMPLETION **2** : something completed or effected **3** : an acquired excellence or skill

1accord \ə-'kȯrd\ *vb* [ME, fr. OF *acorder*, fr. L *ad-* to + *cord-*, *cor* heart] **1** : GRANT, CONCEDE **2** : AGREE, HARMONIZE — **ac-cor-dant** \-'kȯrd-ᵊnt\ *adj*

2accord *n* **1** : AGREEMENT, HARMONY **2** : willingness to act (gave of their own ~)

ac-cor-dance \ə-'kȯrd-ᵊns\ *n* **1** : ACCORD **2** : the act of granting

ac-cord-ing-ly \ə-'kȯr-diŋ-lē\ *adv* **1** : in accordance **2** : CONSEQUENTLY, SO

according to *prep* **1** : in conformity with (paid *according to* ability) **2** : as stated or attested by (*according to* you)

1ac-cor-di-on \ə-'kȯr-dē-ən\ *n* [G *Akkordion*, fr. *Akkord* chord] : a portable keyboard instrument with a bellows and reeds — **ac-cor-di-on-ist** \-ə-nist\ *n*

2accordion *adj* : folding like the bellows of an accordion (~ pleats)

ac-cost \ə-'kȯst\ *vb* [MF *accoster*, ultim. fr. L *ad-* to + *costa* rib, side] : to approach and speak to esp. aggressively

1ac-count \ə-'kaůnt\ *n* **1** : a statement of business transactions **2** : an arrangement with a vendor to supply credit **3** : a statement of reasons, causes, or motives **4** : VALUE, IMPORTANCE **5** : a